UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
GENERAL

TD/B/C.4/332
19 April 1990

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Committee on Shipping
Fourteenth session
Geneva, 21 June 1990
Item 5 of the provisional agenda

PROTECTION OF SHIPPER INTERESTS

Experiences in freight rate negotiations

Report by the UNCTAD secretariat

GE.90-51116

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CONTENTS

		Paragraphs
Introduction		(i) - (viii)
Summary		(ix) - (xxix)
Part one	An overview of historical developments in relations between shippers' organizations and liner conferences	1 - 16
	A. Evolution of the negotiation process	1 - 13
	B. Recent developments in liner trades	14 - 16
Part two	Experiences in negotiations between shippers' organizations and conferences	17 -147
	Introduction	17 - 18
I.	Institutional arrangements and subjects covered under negotiations	19 - 80
	A. Form and membership of shippers' organizations	19 - 26
	B. Subregional/regional co-operation among shippers' organizations in negotiations	27
	C. Participants in negotiations	28 - 31
	D. The role of government authorities in negotiations	32
	E. The role of freight booking centres	33
	F. The role of shipping investigation work	34 - 35
	G. The role of independent accountants	36 - 37
	H. Relations between shippers at both ends of a trade in negotiations with conferences	38 - 39
	I. International conventions, national laws and regulations by regional economic integration organisations governing negotiations	40 - 54
	(i) The United Nations Liner Code	40 - 41
	(ii) National laws and/or regulations and regulations established by regional economic integration organizations	42 - 54
	J. Agreements between shippers' organizations and conferences	55 - 61
	K. Loyalty arrangements	62 - 67
	L. Subjects covered under negotiations	68 - 74
	M. Implementation of UNCTAD recommendations	75 - 80
II.	Negotiation procedures: General rate increases	81 - 119
	A. Introduction	81
	B. The initiation of negotiations	82 - 84
	C. Notice to shippers	85
	D. Information provided by conferences to justify changes in freight rates	86 - 93

Paragraphs

E. Actions taken by shippers' organizations in response to proposed rate increases ..... 94 - 97
(i) Monitoring cost data ..... 98 -104
(ii) Monitoring revenue data ..... 105 -106
(iii) Monitoring voyage data ..... 107 -115
(iv) Monitoring general economic indicators ..... 116 -119

III. Procedures on surcharges and other related matters .. 120 -147

A. Introduction ..... 120 -121
B. Currency adjustment factor ..... 122 -129
C. Bunker adjustment factor ..... 130 -133
D. Port congestion surcharge ..... 134 -135
E. Other charges 136
F. Other related matters ..... 137 -147
(i) Commodity rates and promotional rates ..... 137 -138
(ii) The basis and sequence for applying surcharges and additionals to the basic rate ..... 139 -142
(iii) Incorporation of surcharges into the basic rate ..... 143 -144
(iv) Freight rates in multimodal transport ..... 145 -147

Annex

List of governments, shippers' organizations and liner conferences which provided information in response to the UNCTAD secretariat's questionnaire

Abbreviations

ASCOBIPS	-	Association of Shippers' Councils of Bangladesh, India, Pakistan and Sri Lanka
BAF	-	bunker adjustment factor
CAF	-	currency adjustment factor
CENSA	-	Council of European and Japanese National Shipowners' Associations
ESC	-	European Shippers' Councils
FAK	-	freight all kinds
FASC	-	Federation of ASEAN Shippers' Councils
FCL	-	full container load
FELACUTI	-	Federacion Latinoamericana de Consejos de Usarios del Transporte Internacional
GRI	-	general rate increase
ISCOS	-	Intergovernmental Standing Committee on Shipping
LCL	-	less than container load
MINCONMAR	-	Ministerial Conference of West and Central African States on Maritime Transport
NVOCC	-	non-vessel-operating common carrier

Introduction

(i) This report has been prepared in pursuance of resolution 59 (XII), paragraph 6, of the Committee on Shipping, in which the Committee requested the UNCTAD secretariat to prepare, for information, a report based on experiences in freight rate negotiations in order to assist shippers' organizations in determining appropriate means of preparing for and proceeding in their negotiations with conferences. In paragraph 7 of the resolution, the Committee also requested the UNCTAD secretariat to report to the Committee on Shipping on how various recommendations contained in the resolution had been implemented. The recommendations, contained in paragraphs 1 to 4 of the resolution, concerned consultations between liner conferences and shippers' organizations, the application of changes in freight rates and surcharges, and co-operation between shippers at the national, subregional or regional level.

(ii) Earlier reports by the UNCTAD secretariat have analysed the liner conference system and possible measures for promoting a balance of interests between shippers and conferences. 1/ Prior to the adoption of resolution 59 (XII), the UNCTAD secretariat had prepared two reports:
(a) "The effectiveness of consultation mechinery" (TD/B/C.4/260) and
(b) "Formulae and methods used for calculating and applying liner conference surcharges" (TD/B/C.4/265). These reports had identified factors which hampered consultations between shippers' organizations and liner conferences and had also identified major weaknesses in the methods and formulae being used to calculate and apply bunker adjustment factors (BAF) and currency adjustment factors (CAF). The reports made a number of recommendations, including the possibility of elaborating guidelines in the calculation and application of BAF and CAF, as well as greater co-operation among shippers' organizations in order to increase their effectiveness in consultations with liner conferences. Pursuant to a discussion on these reports, the Committee on Shipping made comprehensive recommendations on specific subjects on which consultations should be held and requested the present report on experiences in freight rate negotiations and the implementation of these recommendations.

(iii) This report briefly examines the historical evolution of relations between shippers' organizations and liner conferences and then gives an account of procedures relating to current practices in freight rate negotiations. Since the basic objective of the report is to assist shippers' organizations in preparing for negotiatiations with conferences, emphasis has been placed on areas where some shippers' organizations encounter problems and where some guidance is therefore needed to increase their effectiveness in the negotiations. Attention has also been given to new developments in liner shipping and the need to develop negotiation procedures which take into account such developments.

(iv) In preparing this report the secretariat has relied to a high degree on information communicated to it by Governments, shippers' organizations and liner conferences in response to a note sent to governments and a questionnaire sent to shippers' organizations and liner conferences. A list of Governments, shippers' organizations and liner conferences which responded to the questionnaire is given in annex I. The secretariat wishes to acknowledge with gratitude the co-operation received from Governments and organizations. Additional information has been obtained from published and other sources available to the secretariat. The information gathered from the various sources covers a representative sample of world liner trades.

(v) A distinction is sometimes made between freight rate "consultations" and freight rate "negotiations." In the United Nations Convention on a Code of Conduct for Liner Conferences, only the term consultations is used. Some respondents to the secretariat's questionnaire explained that "negotiations" were conducted between shipping lines and individual shippers, consignees, trade associations or commodity groups to discuss, on a day to day basis, freight rates and conditions of service. On the other hand "consultations" were held with national shippers' organizations, which group all shippers, to cover a wide range of subjects on an ad hoc basis, and no negotiations were held with such organizations. This distinction does not appear to be applicable to all trades, since in some trades conferences hold regular discussions with national shippers' organizations on freight rates, which would qualify as negotiations according to the above description. Furthermore, many respondents to the secretariat's questionnaire (both conferences and national shippers' organizations) used the term negotiations to describe discussions between conferences and shippers' organizations. Certain national legislations also explicitly provide for "negotiations" to take place between conference and shipper bodies. Because there is no clear and widely accepted distinction between the terms "negotiations" and "consultation", in the present report the two terms are used interchangeably and generally they mean any discussions between shippers and shippers' organizations on the one hand and conferences on the other concerning levels and structures of freight rates, surcharges and general conditions of service.

(vi) Section I.A in part two of the present report describes different forms of shippers' organizations which exist in different countries. The United Nations Code of Conduct for Liner Conferences defines a shippers' organization as "an association or equivalent body which promotes, represents and protects the interests of shippers and, if those authorities so desire, is recognized in that capacity by the appropriate authority or authorities of the country whose shippers it represents". This definition is sufficiently wide to cover different types of organizations such as shippers' councils, commodity groups, trade associations, etc. However, the use of the phrase "the country whose shippers it represents" implies that such an organization groups all shippers in a given country, i.e. that it is a nationwide shippers' organization. In this report, therefore, the term "shippers' organization" will generally be used to describe an organization which represents all shipper interests on a nationwide basis. On the other hand, it is recognized that some organizations are formed to protect the interests of shippers of only one sector, as in the case of a commodity group or of a given region in a country. Furthermore, shippers' organizations of several countries may co-operate to form a subregional or regional shippers' organization to represent the interests of all shippers in the co-operating countries. Wherever appropriate these variations of shippers' organizations will be clarified in the report.

(vii) The report consists of two parts. The first part provides an account of the evolution of consultations and relations between shippers' organizations and liner conferences, and also outlines recent changes in the liner shipping industry which have had an impact on the relations between shippers' organizations and conferences. The second part provides an account of experiences in negotiations between shippers' organizations and conferences. It is subdivided into three chapters. Chapter I discusses the institutional arrangements under which freight rate negotiations are normally held, provides a description of the parties involved in negotiations and of the regulatory instruments or laws and agreements which govern negotiations in various trades, gives a description of main subjects which are covered under

negotiations, and also reports on the implementation of the recommendations contained in Committee resolution 59 (XII); Chapter II describes negotiation procedures for general rate increases, and Chapter III covers procedures for surcharges, other charges and additionals, and other related issues, namely commodity rates and promotional rates, the basis for applying surcharges to the basic rate, incorporation of surcharges into the basic rate and freight rates in multimodal transport services. The report is intended to be comprehensive, and as a result in some sections it elaborates on some subjects which have already been covered in earlier reports by the secretariat.

(viii) The present report is expected to assist developing countries in establishing or strengthening their shippers' organizations in order to ensure the effectiveness of the consultation machinery.

Summary

(ix) Consultations and negotiations between shippers' organizations and conferences have developed considerably over the years, and many countries, including developing ones, have established shippers' organizations, which is an indication of the importance attached to the protection of shippers' interests in the liner trading system.

(x) In recent years liner shipping has undergone important changes, including the presence of an excess tonnage situation, growth in the importance of non-conference lines, a decline in the importance of loyalty contracts and the emergence of service contracts, an increase in frequency in the application of surcharges, the wide establishment of consortia among shipping lines, the expansion of trans-shipment services and door-to-door integrated combined or multimodal transport services, the growth of non-vessel-operating common carriers (NVOCC), the establishment of "super conferences", the establishment of trade-wide "discussion agreements" between conferences and non-conference lines and the introduction of new types of freight rates (e.g. LCL, FCL, box and FAK rates as well as inter-modal through rates). These call for new procedures in consultations and negotiations or in shipper/conference relations. In some cases an adequate response may be provided by giving an appropriate interpretation to existing provisions of the Liner Code, as suggested in the documentation prepared for the Review Conference on the Code. On the other hand, some of the changes may be adequately addressed by widening existing consultations and negotiations between shippers' organizations and conferences to include new subjects. Furthermore, the growth in importance of non-conference lines and NVOCCs makes it essential for shippers' organizations to develop a dialogue with such lines and operators in order to obtain the best available services in the liner trades.

(xi) As a result of some of these changes, liner freight rates have largely been influenced by market forces, so that in many trades the actual rates offered to shippers have been considerably lower than the officially negotiated tariffs and there is a need for negotiation concerning the restructuring of tariffs in order to reflect actual freight rates in use.

(xii) However, some of the changes may not continue over the long run, and therefore any strategies adopted by shipper interests to deal with current changes must be mindful of possible future long-term developments.

(xiii) Committee resolution 59 (XII) identifies a number of subject matters on which conferences and shippers' organizations should hold consultations.

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These subjects largely reconfirm article 11 of the United Nations Liner Code. While the resolution and the Code identify broad principles for consultations, neither of them provide procedural details as to how all the various aspects of the consultations should be conducted. The procedures currently in use have been decided by the commercial parties involved (conferences and shippers' organizations or shippers). However, it would appear that the procedures that have evolved in different trades have in many cases not been mutually satisfactory to the commercial parties.

(xiv) Shippers' organizations exist in different forms but in order to be effective a shippers' organization must be broadly representative and involve the direct participation of shippers. In developing countries it may be necessary to recognize representatives of Governments or parastatal organizations as rightful participants in negotiations with conferences, and for some developing countries favourable consideration should be given to external financial and technical assistance in establishing suitable shippers' organizations.

(xv) Subregional and regional co-operation among shippers' organizations should be promoted and strengthened in order to increase their effectiveness.

(xvi) Several entities or institutions usually participate in negotiations with conferences. Where parallel and/or multi-level negotiations exist, it is essential to establish arrangements which ensure that negotiations are not fragmented but rather that they complement each other.

(xvii) At times conflicting claims between shippers at opposite ends of the trade may arise for the right to negotiate with conferences. Consultations at the international level should try to clarify this issue and promote further co-operation between shippers' organizations and shippers at both ends of a trade.

(xviii) At the international level, the United Nations Code of Conduct for Liner Conferences regulates relations between liner conferences and shippers' organizations. In order to enforce the provisions of the Code at the national level, it is necessary to enact appropriate national legislation. Some countries which are not Contracting Parties to the Convention on the Code have passed national legislation which deals with questions of freight rate negotiations and relations between shippers and shipowners which to a large extent reflects the principles of the Code with regard to the protection of shippers' interests.

(xix) For the Liner Code to become a basis for negotiations, it is essential for Governments at one or both ends of a given trade not only to take the necessary legislative and other measures required to implement the Code but also to give strong support to the Code and encourage conferences to accept the Code as a basis for negotiations.

(xx) In a number of trades, conferences and shippers have established formal agreements between them as a basis for their negotiations. Such agreements tend to encourage the parties concerned to respect the negotiations as well as the results arising from them. Shippers' organizations are therefore encouraged to consult with conferences with a view to formulating formal agreements on negotiations.

(xxi) The use of loyalty arrangements has diminished considerably in most liner trades, and in some trades they are effectively prohibited by law. Some shippers' organizations are advocating the abolition of loyalty contracts

where such arrangements still exist and their replacement either with less than 100 per cent loyalty contracts or with service contracts.

(xxii) The principle that liner conferences should fix freight rates on the basis of consultations and negotiations with shippers' organizations, as well as the need to provide acceptable evidence to justify rate increases, has generally been accepted in most liner trades. In practice, however, not all the subjects included in resolution 59 (XII) are being negotiated, and quite often during negotiations conferences would appear to take positions which amount to a refusal to negotiate with shippers. It is therefore recommended that the problem of shipper/shipowners consultations should continue to be monitored, and conferences which do not hold meaningful consultations with shippers' organizations should be urged to do so. Furthermore, shippers' organizations should ensure that they establish negotiations with non-conference lines as well as NVOCCs in order to obtain the best available services in the liner trades.

(xxiii) In negotiations for general rate increases, it is recommended that conferences should provide detailed cost and revenue data, as well as data on voyage operations, in order to facilitate negotiations. The details of the information to be provided and the basis for calculations of the relevant data should be subject to consultation and agreement with shipper's organizations.

(xxiv) To respond effectively to proposed rate increases, shippers' organizations need to develop comprehensive data resources of their own, as well as expertise in shipping investigation work, and where requested shippers' organizations in developing countries should be given assistance in this regard. Furthermore, Governments should assist shippers' organizations in obtaining access to certain sources of information such as freight manifests in order to enhance the availability of data.

(xxv) It is recommended that shippers' organizations should seek to reach agreement with conferences on methods for calculating and applying surcharges. Shippers' organizations and conferences should promote equity and standardization in the calculation and application of surcharges with regard to such elements as review periods, trigger points, etc.

(xxvi) The ESC has rescinded ESC/CENSA Joint Recommendation No.11 on currency adjustment factors (CAF) and is advocating the abolition of CAF. This initiative has received wide support among shippers' organizations. In this regard an exchange of views between shippers' organizations would facilitate further action on this issue. On the other hand CENSA has maintained that the CAF is a necessry mechanism to deal with the problem of fluctuations in currency exchange rates.

(xxvii) While port congestion is at present relatively unimportant, attention should continue to be given to the methods for calculation and application of port congestion surcharges, since there is generally a lack of well established principles and methods to deal with port congestion.

(xxviii) There is a lack of uniformity in the application of surcharges and other additionals to the basic rate. Attempts to standardize freight rate calculations, as exemplified by the ESC's Liverpool formula, should be supported. Other shippers' organizations should consult and co-operate with each other and also consult with conferences in order to arrive, to the extent feasible, at a universal solution to this problem.

(xxix) The incorporation of surcharges into the basic rate should be subject to consultations and agreement between conferences and shippers' organizations.

Part one

AN OVERVIEW OF HISTORICAL DEVELOPMENTS IN RELATIONS BETWEEN SHIPPERS' ORGANIZATIONS AND LINER CONFERENCES

A. Evolution of the negotiation process

1. Efforts by shippers to protect their interests have a long history. As far back as the early 1950s shippers in Europe were expressing dissatisfaction with the existing arrangements in liner shipping. The earliest national shippers' councils were formed in Europe in the late 1950s and early 1960s as a means of providing countervailing power against the conferences.

2. In 1963 several national shippers' councils in Europe joined together to form the European National Shippers' Councils (ENSC), later renamed the European Shippers' Councils (ESC), and started seeking a dialogue with conferences on a number of matters, including (a) general rate increases and surcharges, (b) loyalty contracts, (c) exclusion of f.o.b./f.a.s. shipments from loyalty arrangements, (d) regularity and frequency of sailings of conference ships, (e) uniformity of bills of lading and (f) simplification of conference tariffs and nomenclatures. Governments of European maritime nations, within the framework of the Consultative Shipping Group, supported the idea of self-regulation among commercial parties. The first move towards such self-regulation was in the form of a Note of Understanding concluded in 1963 between European conference lines, represented by the Council of European and Japanese National Shipowners' Associations (CENSA), and shippers represented by ENSC. The Note expressed a mutual recognition of the merits of the conference system and the use of consultations as a means for solving commercial matters and disputes.

3. The establishment of shippers' organizations in developing countries generally came considerably later, although as early as 1959 the Indian Government set up the Freight Investigation Bureau (FIB) which was responsible for, among other things, organizing shippers in various parts of the country on a regional basis in order to strengthen their bargaining position vis-à-vis liner conferences and to investigate complaints of high or discriminatory freight rates and to secure their adjustment where necessary. Through the FIB, a discussion formula was developed in the early 1960s and agreed between the country's major shippers' associations and liner conferences.

4. At the international level, policy discussions on questions of consultation and relations between shippers and conferences became an established feature in the early 1960s. During this period developing countries were pointing out, inter alia, that their commodity prices, balance of payments and other aspects of trade were being adversely affected by the high levels of freight rates and frequent increases which were made possible by the monopolistic power of liner conferences. The Common Measure of Understanding on Shipping Questions adopted at the first session of UNCTAD (Geneva, 1964) was largely concerned with the liner conference system. 2/ The Understanding reiterated the need for the liner conference system but recommended the establishment of consultation machinery "with adequate procedures for hearing and remedying complaints, by the formation of shippers' councils or other suitable bodies on a national and regional basis". It also recommended subjects which could be raised within the consultation machinery. The subsequent establishment of the UNCTAD Committee on Shipping (April 1965) provided a permanent forum where Governments could be encouraged to influence changes in the liner conference system. The terms of reference of the Committee included, inter alia, the establishment of organized consultation

machinery and the formation of shippers' councils or other suitable bodies, especially in developing countries.

5. Outside the framework of UNCTAD, in 1971 the European Shippers' Councils (ESC) and CENSA adopted the Code of Practices for Conferences, which sought to establish "meaningful consultations", that is, timely discussion and clarification of matters of mutual concern to shippers and shipowners relating to conference activities and the seeking of solutions to issues arising. Among other things, the ESC/CENSA Code set out principles concerning the relationship between shippers and conferences with regard to loyalty arrangements, the use of non-conference ships, information to be published by conferences, rate increases, surcharges, consultations and machinery for settlement of disputes. However, at several intergovernmental meetings within UNCTAD, it was pointed out that the ESC/CENSA Code had been prepared without direct involvement of the developing countries or of the shippers, shipping lines and Governments of many other countries and that it did not fully meet their needs and interests, especially those of developing countries. Because of these considerations, it was decided to prepare and adopt a universally accepted code of conduct for liner conferences which fully took into account the special needs of the developing countries. 3/ The United Nations Convention on a Code of Conduct for Liner Conferences (Liner Code) was adopted in 1974. While fundamentally reflecting the basic philosophy of the ESC/CENSA Code, it was wider in scope, particularly in incorporating the interests of developing countries, and was more detailed in its treatment of many of the subjects covered.

6. Partly as a result of pressure resulting from rapid increases in the levels of freight rates in the late 1960s and early 1970s and partly due to the awareness of the need to protect shipper interests aroused by the Liner Code and reinforced by the work carried out in UNCTAD in the mid 1960s and through the 1970s, many developing countries established shippers' councils or other types of shippers' organizations to counter the conferences' powers to set and maintain freight rates. Using the Liner Code as a reference point, these organizations demanded from the liner conferences the establishment of a dialogue to deal with matters of freight rates and conditions of service.

7. The United Nations Code of Conduct for Liner Conferences and the ESC/CENSA Code can therefore be considered as cornerstones in the development of consultation machinery and overall relations between shippers' organizations and conferences. In this connection, through the years ESC and CENSA have evolved general principles on consultations in the form of ESC/CENSA Joint Recommendations which set out obligations and restrictions on conferences in order to protect shippers' interests while safeguarding conference operations. These Joint Recommendations (now numbering 20) have had the effect of generally increasing the awareness among conferences and shipping lines serving European trades that consultations are an essential part of liner shipping services. Furthermore, many conferences have applied the principles and procedures contained in the Recommendations in their consultations with shippers' organizations outside Europe.

8. As noted before, in many developing countries shippers' organizations were formed in the late 1960s and 1970s which was a period of rapid increases in freight rate levels. The immediate objective of their formation was the containment of increases in freight rates. As the problem of high and rising levels of freight rates persisted, more countries around the world continued to establish shippers' organizations. Information available to the secretariat shows that, with the exception of the United States (where national legislation has not permitted the establishment of national shippers'

councils with powers to negotiate with liner conferences) and the socialist countries of Eastern Europe and Asia, shippers' organizations have been established in countries covered by most of the world's liner trades. In addition, the UNCTAD secretariat has recently received information from various countries, particularly in Latin America and Africa, concerning actions being taken towards the establishment of shippers' organizations. This upsurge in the formation of shippers' organizations demonstrates the importance that continues to be attached to the protection of shipper and transport-user interests as an essential part of the trade and transport system in the liner shipping sector.

9. Until the mid-1970s most liner trades were largely dominated by liner conferences, and in the absence of strong non-conference competition, shippers were generally compelled to sign loyalty contracts with conferences so as to ensure themselves of the availability of regular services and to be entitled to rebates. The shippers were generally dissatisfied with the system largely because of the monopoly power it conferred on conferences, especially in raising and maintaining freight rates. They also claimed that the loyalty system restricted their trading opportunities because conferences were normally not inclined to grant dispensation to shippers to use alternative services when the conference could not provide services at the level of quality and price required by the shippers.

10. In the evolution of relations between shippers and conferences, the role of government has tended to vary between different groups of countries. In many developed market-economy countries, particularly those of Western Europe, shipper/conference relations evolved predominantly on the basis of self-regulation by the shippers and conferences, without direct government involvement. Commercial organizations - shippers' councils - have been established to counterbalance the rate-making power of conferences through direct commercial consultations. However, more recently the European Economic Community has established regulations relating to the relations between conferences and shippers.

11. The United States has historically relied on a system of direct regulation of liner rates. National legislation requires liner conferences to be open-ended, while all conference agreements and freight tariffs in the foreign trade of the United States are to be filed with a governmental agency which has the power to regulate conference rates directly and disapprove those rates which it finds to be unreasonably high or low. 4/ The legislation, however, does not envisage freight rate negotiations between liner conferences and shippers' councils along the lines followed for example in Western Europe. Nevertheless, in recent years a certain degree of consultation appears to have developed between conferences operating in United States foreign trades and shippers' councils located outside the United States.

12. In other developed market-economy countries, for example Australia, the Government has played an important role by establishing legislation which requires liner conferences to negotiate with shippers. The legislation has also prescribed measures to be taken against conferences which fail to comply with the requirements concerning the negotiations.

13. In most developing countries there has been no direct control of freight rates by Governments, though in many countries there is a certain government involvement in the formation and operation of shippers' organizations. However, Governments generally have not established legislation to enforce negotiations between shippers' organizations and liner conferences. In one developing country, namely Brazil, a system of direct regulation of liner

rates has been used. In a number of other developing countries, statutory central freight bureaux and shippers' councils have been established in order to rationalize liner services and to negotiate freight rates with conferences.

B. Recent developments in liner trades

14. Since the 1970s, a number of market, technological and policy developments have occurred in the liner trades that have had a considerable impact on the relationship between shippers' organizations and conferences, as well as having important implications for the application of the various provisions of the United Nations Liner Code which deal with consultations and relations between conferences and shippers' organizations. These developments are as follows:

(a) The prolonged world economic recession that commenced mainly with the oil crisis in the early 1970s accompanied by the availability of subsidized credit or direct subsidies for the purchase of ships led to a growing tonnage overcapacity in practically all sectors of world shipping. At the same time, there has been large-scale participation by non-conference lines in liner trades. Some of the non-conference lines have been able to supply services at levels of quality and freight rates which have been equally or even more competitive as compared to those offered by conferences. The growth of non-conference competition has encouraged conferences to become more accessible to shippers wishing to discuss freight rates, surcharges and service conditions, and shippers' bargaining power vis-à-vis conferences has generally been enhanced. Shippers, for example, have been able to obtain from conferences rate exemptions or reductions far greater than those stipulated in the official tariff, and thus many conference tariffs have been eroded and market-determined rates predominate instead. The erosion of conference tariffs has encouraged shippers to press for the restructuring of tariffs to reflect prevailing market freight rates. Some restructuring of tariffs has been effected in some conferences;

(b) Furthermore, non-conference competition has considerably reduced the importance of traditional loyalty contracts, which have tended to go out of use in many trades where shippers have had greater availability of non-conference services;

(c) In a number of countries there have been new developments with regard to shipping regulations by Governments. These regulations include the European Economic Community (EEC) Council Regulations of 22 December 1986 on maritime transport, the Australian Trade Practices (International Liner Cargo Shipping) Amendment Bill 1989, Part X, the New Zealand Shipping Act, 1987, and the Canadian Shipping Conferences Exemption Act, 1987. These regulatory instruments are described later in greater detail in part two, chapter I, section I. The UNCTAD secretariat has not received any reports on recent developments in the establishment of legislation or other instruments in developing countries which regulate consultations between shippers and conferences;

(d) The United States Shipping Act of 1984, while specifically aimed at regulating United States liner trades, has also had an important influence on conference trades in general. Like its predecessor, the Shipping Act of 1916 (and its amendments, mainly those of 1961), the 1984 Act recognizes the open conference system. It prohibits deferred rebates and the use of loyalty contracts but permits time-volume rates to be offered in the tariffs. It also allows shipping lines which are members of conferences to enter into service contracts outside the scope of the conference agreement. The Act does not

extend anti-trust immunity to agreements between conferences and shippers' councils, and thus the development of the relationship between shippers and conferences as it exists in other trades is still hampered. However, chapter 1, section 5, of the Act prescribes that each conference agreement has to provide for a consultation process designed to promote commercial resolution of disputes and establish procedures for promptly and fairly considering shippers' requests and complaints. Certain shippers' councils located outside the United States have interpreted this section as being a basis for them to have the right to consult with conferences operating in the United States trades. On the other hand, the Act allows the formation of shippers' associations which have been defined as "a group of shippers that consolidates or distributes freight on a non profit basis for the members of the group in order to secure carload, truckload or other volume rates or service contract"; 5/

(e) Rapid and unexpected changes in certain ship operating costs, particularly bunker costs, and large currency fluctuations have led to the introduction of specific surcharges which have now become entrenched in liner freight rates. Surcharges have become a matter of increasing concern to shippers' organizations because of their large sizes and the difficulties in understanding and monitoring them. Some shippers have claimed that conferences have been using the surcharges, which are normally not subject to negotiation, partly to circumvent general rate increases which in most trades are subject to negotiation. They are also a source of concern to shippers because they tend to introduce instability into freight rates, thus undermining one of the claimed virtues of the conference system;

(f) The development of containerization, which has involved the introduction of larger, more expensive and faster liner ships, has encouraged efforts by shipping lines to rationalise their services through pooling arrangements and the establishment of consortia, joint chartering and other types of co-operative working arrangements in order to exploit economies of scale and to provide higher frequency services than would be feasible if lines operated independently. Where a consortium is not already a member of a larger association which constitutes a liner conference, such a consortium could in itself fall within the United Nations Liner Code's definition of a liner conference. This would imply that shippers' organizations would need to establish consultations with such consortia in addition to consultations they may have already established with the traditional liner conferences;

(g) Containerization has also led to the growth of trans-shipment services. To achieve maximum employment of their tonnage capacity, liner operators have made wide use of feeder services geared to their main line services. By reducing the number of ports of call, lines can reduce port-related voyage costs and this, together with better capacity utilization, would increase trading profits per container transported. Such trans-shipment services have had an impact on consultations by restricting the ability of conferences to provide all the required cost and revenue data for justifying rate increases, that is, including information relating to rates paid for trans-shipment services. Generally a conference would not be in a position to provide data relating to trans-shipment services performed by another carrier. The burden of a shippers' organization in monitoring rate changes thus tends to increase;

(h) Furthermore, the development of containerization has been accompanied by the introduction of new types of freight rates such as "full container load" (FCL) and "less than container load" (LCL) rates on specific commodities, box rates and "freight all kinds" (FAK) box rates, which

represent new elements in the negotiations between shippers and conferences;

(i) With the development of multimodal transport services, some conferences have established inter-modal through freight rates. This has also caused problems in consultations with shippers' organizations, since shippers' organizations are generally not in a position to control and negotiate rate changes which are made by parties offering services in other modes of transport outside the conference;

(j) There has also been a growth of multimodal transport operators who do not operate vessels for the carriage of cargoes on the sea-leg of multimodal transport services (commonly referred to as non-vessel-operating common carriers - NVOCCs). The NVOCCs may be viewed by ship operators as a shipper, while to shippers with a beneficial interest in the cargo they may be viewed as being basically providers of transport services. It has been suggested that NVOCCs are not shippers in the context of the United Nations Liner Code, since they have no beneficial interest in the cargo, and their relationship with liner conferences or liner conference member lines should be regared "as a business relationship which does not appear to need any special protection within the framework of the provisions of the Code relating to consultations". 7/ The growth of NVOCCs and the introduction of box/FAK rates (mentioned above) make it possible for the NVOCCs to charter container slots under their own name at box/FAK rates and in turn sell the container space to shippers at higher LCL rates which may be different from those published by the conferences for different classes of commodities;

(k) The relative importance of levels of freight rates vis-à-vis other aspects of service quality has contributed to changes in some areas of production activities, especially in developed countries. In some sectors of production, distribution and stock-holding costs have come to represent a substantial share of the overall selling price. In such cases, shippers are prepared to accept higher freight rates in return for a higher-frequency service that reduces inventory costs. Consequently shippers may tend to place greater importance on levels and frequencies of service and physical distribution concepts than on freight rates. In other areas, some consignee-shippers who attach great importance to service frequency, particularly arrival dates, have found it necessary to nominate ships to be used, irrespective of whether the sale is made on f.o.b. or c.i.f. terms. As these practices become commonplace, they tend to raise questions regarding the right of the exporter-shipper to negotiate freight rates;

(l) Since the mid-1980s, in an effort to promote rate stability at renumerative levels, various agreements have been established between several conferences and also between conferences and independent carriers. A number of "superconferences" have been established, mainly in the United States-Far East trades and United States-Europe trades. They have been formed on a broader geographic basis than existing individual conferences by combining them and superseding them, the main aim being to reduce competition and thus maintain rate stability, as well as to restore rates to more renumerative levels;

(m) In addition to "superconference" agreements, other agreements have been reached between conferences and independent lines aimed at limiting competition over substantial parts of entire liner trades and also reducing overall capacity utilization in the trades concerned.

15. It is evident from this overview that consultations and relations between shippers' organizations and conferences have grown considerably over

the years and that the protection of shippers' interests has become an important part of the trading system in liner trades. Secondly, in recent years liner shipping has undergone important changes, many of which were not foreseen in earlier years, particularly when the United Nations Liner Code was adopted. This means that new procedures for consultations or for shipper/conference relations are being or need to be developed to respond to the changed situation. In some cases an adequate response may be provided by giving an appropriate interpretation to existing provisions of the Liner Code, as suggested in some of the documentation prepared for the Review Conference on the United Nations Liner Code. 8/ However, some of the other changes may be adequately addressed by widening existing consultations between shippers' organizations and conferences to include new subjects. The growth in importance of non-conference lines and NVOCCs means that shippers' organizations have to develop a dialogue with such lines and operators in order to obtain the best available services in the liner trades. Certain shippers' councils are also widening their activities and concerns to cover the whole area of door-to-door transport and physical distribution, thus acting in a more comprehensive manner as transport users' councils.

16. While many of the observed changes may represent long-term developments in liner shipping, some of them may not continue in the long term. For example, the overtonnaging situation could ease considerably over the coming years and the existing levels of non-conference competition could therefore be reduced, with conferences becoming dominant and less responsive to shippers' demands. This means that any strategies adopted by shipper interests to deal with current changes must be based on considerations of possible future long-term developments.

Part two

EXPERIENCES IN NEGOTIATIONS BETWEEN SHIPPERS' ORGANIZATIONS AND CONFERENCES

Introduction

17. Committee on Shipping Resolution 59 (XII), paragraph 1, recommends that Governments of States members of UNCTAD should invite liner conferences to hold, on request, consultations with shippers' organizations on a number of subjects. These subjects largely recomfirm those outlined in article 11 of the Liner Code. In this connection, it should be noted that, while the resolution and the Liner Code identify broad principles for consultations, neither of them provides procedural details as to how all the various aspects of consultations should be conducted. Such matters as methods for calculating changes in freight rates and surcharges, the specific types of cost and revenue information to be presented by conferences to justify rate changes or surcharges, the question as to whether consultations should be held with exporter-shippers or consignee- shippers, etc., are not specified. The procedures currently in use have been decided by the commercial parties involved (conferences and shippers' organizations or shippers). However, it would appear that the procedures that have evolved in different trades have in many cases not been mutually satisfactory to the commercial parties concerned.

18. In the secretariat's questionnaire, shippers' organizations were asked whether they were conducting consultations with non-conference lines. While some responses were given on this question, they did not provide a basis for a comprehensive account of experiences in consultations between non-conference lines and shippers' organizations. This report is therefore devoted largely to consultations with liner conferences, although the impact of the growth of non-conference lines on the consultation machinery has already been noted in part one. In their responses to the questionnaire, both conferences and shippers' organizations reported that they had not made use of arbitration or conciliation in their negotiations and therefore experiences in these procedures are not discussed in the present report.

I. INSTITUTIONAL ARRANGEMENTS AND SUBJECTS COVERED UNDER NEGOTIATIONS

A. Form and membership of shippers' organizations

19. There is a wide variation in the nature of shippers' organizations. They can be grouped into three main categories: (i) shippers' councils based on a voluntary association of private enterprises; (ii) shippers' organizations created and controlled by government; and (iii) organizations with varying degrees of a mixture of voluntary association of private enterprises and government control or support.

20. Generally, shippers' organizations in developed market-economy countries fall under the first category. They are created on the basis of private association, and membership is therefore usually composed of private enterprises.

21. In socialist countries, foreign trade and shipment arrangements are generally controlled by State institutions, and shippers' organizations do not generally exist. This report therefore excludes the experiences of socialist countries in freight negotiations.

22. In a few developing countries, shippers' councils have been formed on a voluntary basis by private enterprises. However, in most developing countries shippers' organizations fall under the last two of the three categories listed above. In many of these countries a large part of production for export is handled by small producers, and exports are marketed through many channels. Even where national marketing or purchasing organizations have been set up for individual commodities, the actual shipment arrangements are still fragmented among many dealers, wholesalers and shippers. Generally, the small producers or shippers have no resources or expertise to organize themselves into shippers' councils. Furthermore, in many instances a large number of export commodities are handled by foreign dealers or agents of foreign importers. These foreign enterprises are usually not interested in forming national shippers' councils in the developing countries, since their main objective is to protect the business interests of their principals located in developed countries. Under these circumstances, many Governments in developing countries have found it necessary to initiate shippers' organizations in order to protect national interests. In addition, the extensive involvement of public institutions in the production and marketing of export commodities has also contributed to government leadership and initiatives in the creation and operation of shippers' organizations.

23. In some developing countries, shippers' organizations are statutory bodies and membership varies from cases in which it is composed only of representatives of government ministries and/or parastatal organizations without any direct participation by shippers, to cases in which there are mixtures of representation from private shippers and government.

24. In a few cases chambers of commerce and freight forwarders have become members of shippers' organizations, or a shippers' council may be acting as a committee of a chamber of commerce. Chambers of commerce tend to include both shipper interests and shipowner interests, and similarly freight forwarders represent both shippers and carriers, and membership of such institutions in a shippers' organization may thus raise conflicts of interest.

25. It is therefore apparent that the nature of shippers' organizations and their membership vary significantly and it cannot be stated a priori whether a particular form of organization and membership is preferable. However, to be

effective a shippers' organization must be broadly representative and involve the direct participation of shippers. Among other things such direct participation ensures representation of parties who possess effective control over cargoes. It also facilitates access to shipping information, which is a vital factor in negotiations with conferences.

26. In some developing countries there are no active shippers' organizations and therefore national shippers' interests are not organized or represented for purposes of negotiating with carriers. Over a number of years the UNCTAD secretariat has assisted a number of developing countries with the setting up of shippers' organizations and there is a continuing demand for external assistance to help developing countries which wish to establish shippers' organizations and/or increase the effectiveness of existing ones.

B. Subregional/regional co-operation among shippers' organizations in negotiations

27. Liner conference trades tend to cover large geographical subregions or regions and thus conference activities extend beyond national boundaries, with common tariffs and similar conditions of service being applied to several adjoining countries. Shippers' organizations in different countries thus tend to encounter similar problems and share the same interests with regard to questions of freight rates and conditions of service. In view of this, it is beneficial for national shippers' organizations to form subregional or regional institutions or co-operative arrangements which correspond to conference trade areas. Such co-operation plays an important role in many trades. For example under the Union of African Shippers' Councils, 25 West and Central African countries negotiate jointly with liner conferences, while the European Shippers' Council has a membership of 16 national shippers' councils from Western Europe and Israel. Other subregional organizations include the Federation of ASEAN Shippers' Councils (FASC), which groups together the national shippers' organizations of Indonesia, Malaysia, the Philippines, Singapore and Thailand, with the Shippers' Council of Korea being an associate member; there is also the Association of Shippers' Councils of Bangladesh, India, Pakistan and Sri Lanka (ASCOBIPS). The Intergovernmental Standing Committee on Shipping (ISCOS) represents shippers' interests in Kenya, the United Republic of Tanzania, Uganda and Zambia. In Latin America, shippers have created a federation of international transport users (FELACUTI) which has a membership of 17 countries. The federation is subdivided into three zones - the Andean, the Caribbean and the Southern zones. In the Asian region, some co-operation is also being exercised through meetings of chief executives of national shippers' organizations under the auspices of the Economic and Social Commission for Asia and the Pacific (ESCAP).

C. Participants in negotiations

28. In order to facilitate negotiations with conferences, a shippers' organization normally establishes a specific committee from among its membership to carry out the actual negotiations. In certain cases representatives of individual interested members of the organization who are not commitee members may also participate. In certain other cases where membership does not include government, the Government may be invited as an observer.

29. In some trades there are large individual shippers, trade associations or commodity groups which are members of national shippers' organizations but which in addition negotiate independently with conferences. In such cases negotiations take place at two levels - within the framework of the national

shippers' organizations and outside that framework. Where this situation exists there is a need for a clear division of responsibility between the national shippers' organization and the individual members. In this connection it may be pointed out that negotiations conducted through the national shippers' organization generally serve the joint interests of all shippers, including the small ones, and also that they tend to minimize the fragmentation of shipper representation. On the other hand, however, individual trade associations or commodity groups have specialized knowledge which may place them in a better bargaining position than the national shippers' organization.

30. The resolution of this problem of multiple-level negotiations would have to take into account the particular circumstances of each trade. In some trades there is an arrangement whereby a national or regional shippers' organization negotiates maximum and minimum rates of freight and conditions of carriage. Individual shippers or commodity groups may then seek more favourable terms within the established rate ceilings and conditions of service, as well as discussing other issues of specific interest to the shippers concerned.

31. The question of multiple-level negotiations may also arise where national shippers' organizations co-operate to form subregional or regional organizations. Where such co-operation exists the interests of individual national shippers' organizations may be protected through the subregional/regional negotiating committees which draw their membership from the member national shippers' organizations, but individual national shippers' organizations may still deal individually with issues which are of particular concern to the individual country's trade.

D. The role of government authorities in negotiations

32. Article 11 of the Liner Code provides that appropriate authorities should have the right, upon request, to participate fully in the consultations but this does not mean that they play a decision-making role. Government authorities generally play an important role in developing countries, where in many cases shippers' organizations are formed and financed by Governments, and in some cases they play a direct role in actual negotiations. Given such an involvement, it would appear that Governments of these countries may need to be recognized as rightful participants in negotiations with conferences. Indeed, in certain trades, this has been a de facto situation and the conferences involved have fully recognized and accepted the role of the Government in the negotiations. On the other hand, in developed market-economy countries Governments generally do not play any significant role in negotiations, although in some countries Governments have established legislation which regulates liner shipping and negotiations between shippers and liner conferences, as explained in part one.

E. The role of freight booking centres

33. A few countries which have established shippers' councils have in addition established freight booking centres (FBCs). These centres take various forms. Some are statutory bodies empowered to negotiate with shipping lines and to administer cargo allocation. Others are voluntary organizations primarily engaged in combining shipments of small and medium-sized shippers in order to negotiate favourable rates. In one case where a country established a statutory (central) freight booking centre and a shippers' council, the FBC took over practically all the functions of the shippers' council although recently it has been decided to liberalize cargo shipment arrangements. On

the other hand in a number of developing countries voluntary FBCs, working along the lines of shippers' associations, have been formed as arms of shippers' councils. In the latter cases the functions of the FBCs are limited to negotiating rates only for those cargoes which they combine on behalf of shippers and also seeking alternative shipping services.

F. The role of shipping investigation work

34. Many negotiations between shippers' organizations and conferences are based on statistical information presented by the conferences to justify proposed changes in freight rates or surcharges or other aspects of service. 9/ In order for a shippers' organization to respond effectively to the proposals made by the lines, it must develop a system for monitoring various aspects of the shipping services being offered, for example ship costs, voyage costs, cargo handling costs, voyage times and frequencies, trade flows, ships movements, technical characteristics of ships serving the trade, general economic indicators and other facts that may facilitate the negotiations.

35. In some trades the development of such a system, which is generally termed shipping investigation work, is carried out by a specialized committee of the shippers' organization. 10/ The committee may draw its membership from traffic or transport managers of member enterprises or from other special interest groups. In a few trades, shipping investigation work has been carried out by independent accountants acting on behalf of the shippers' organization. 11/ In some other cases the secretariat of the shippers' organization or a department of a government ministry carries out shipping investigation work on behalf of the national shippers' organization. Whatever the arrangement, it is important that a shippers' organization is supported by adequate data and analysis on which it can base sound arguments during negotiations. At the moment, in many developing countries the effectiveness of negotiations has been hampered by inadequacy of shipping investigation work due to a lack either of expertise or of financial resources. In such cases external assistance may play an important role in establishing the necessary framework for shipping investigation work.

G. The role of independent accountants

36. In section F above it was noted that in some conference trades shippers' organizations may employ independent accountants to carry out shipping investigation work on their behalf. Conferences often claim that financial and statistical information relating to the operations of their member lines is confidential. Article 14 of the United Nations Liner Code provides that "a conference, in an effort to expedite consultations, may or upon the request of any of the parties prescribed in the Code as entitled to participate in consultations on general freight-rate increases shall, where practicable, reasonably before the consultations, submit to the participating parties a report from independent accountants of repute, including, where the requesting parties accept it as one of the bases of consultations, an aggregated analysis of data regarding relevant costs and revenues which in the opinion of the conference necessitate an increase in freight rates". Similarly the ESC/CENSA Code provides for the use of independent accountants. In a few cases shippers' organizations and conferences have agreed to an arrangement whereby the conference and the shippers' organization each appoints independent accountants. The independent accountants appointed by the conference compile the conference's statistical and financial data from information communicated by the conference lines, and the independent accountants appointed by the shippers' organization get access to the same information through the

conference's independent accountants. On the basis of that information, the independent accountants representing the shippers' organization can assess the validity of the conference's claim for changes in freight rates.

37. While it would appear that many conferences make use of independent accountants to compile financial and statistical information supplied by individual member lines, there are hardly any shippers' organizations which currently employ independent accountants to examine the accounts presented by the conference side. It seems that the demand for independent accountants is greater on the conference side, where consideration of confidentiality of member lines' information is important. The limited use of independent accountants by shippers' organizations can be attributed partly to the high cost of employing the accountants and partly to the fact that the shippers' organizations may already have access to other sources which can carry out shipping investigation work for them.

H. Relationship between shippers at both ends of a trade in negotiations with conferences

38. Shippers include exporter-shippers and consignee-shippers and both may have an interest in the freight rates and conditions of service relating to the same cargo. Generally, shippers' organizations tend to involve themselves in negotiations in their export trades and there are no known cases of tripartite negotiations involving a conference and shippers at both ends of the trade. The responses to the secretariat's questionnaire indicate that contacts between shippers at opposite ends in order to deal with various matters of common interest are limited and mostly ad hoc. In some cases there is an element of competition for the right to negotiate with conferences.

39. The problem of the relationship between shippers at both ends of the trade has already been recognized in UNCTAD. 12/ So far there are no well defined principles at the international level regarding this relationship in terms of the primacy of negotiating rights and the division of duties and responsibilities between shippers at the two ends of a trade. In this connection it may be noted that the wording of the relevant provisions of the United Nations Code of Conduct for Liner Conferences does not include any stipulation as to which shipper, the exporter-shipper or the consignee-shipper, should have the paramount or priority right to negotiate. Committee on Shipping resolution 59 (XII) (in paragraph 3) invites Governments of States members of UNCTAD to encourage, where consistent with their legislation, shippers' organizations to establish close contacts with shippers' organizations at the other end of the trade.

I. International conventions, national laws and regulations by regional economic integration organizations governing negotiations

(i) The United Nations Liner Code

40. The United Nations Liner Code is an international instrument which aims, inter alia, at regulating the relationship between shippers and liner conferences. Matters concerning this relationship are covered in Chapters III and IV of the Code, and in particular article 11 deals with consultation machinery. In the UNCTAD secretariat's questionnaire, shippers' organizations and conferences were asked whether the Liner Code governed any part of their negotiations. About half of the responding shippers' organizations indicated that the Code did govern their negotiations, while the other half said that it did not. On the other hand only a few liner conferences indicated that the Code was used as a basis for negotiations with shippers, although some noted

that, while their negotiations were not officially based on the Code, they were nevertheless guided by some of the principles embodied in the Code. A large number of conferences stated that they adhered to the voluntary ESC/CENSA Code of Practices, which was reflected in the United Nations Liner Code, although the former is not a binding international instrument.

41. In general, therefore, the Liner Code is officially recognized as a basis for negotiations in some trades but not in others. It would seem that trades in which negotiations take official cognizance of the Code are those in which the Governments at one or both ends of the trade have given strong support to the Code and have urged the conferences to accept the Code's principles in their negotiations. However, in the responses to the secretariat's questionnaire, some shippers' organizations from countries which have ratified the Code pointed out that the Code was not being used as a basis for negotiations. It would therefore appear that there is no general rule regarding the categories of countries or trades in which negotiations take cognizance of the Code.

(ii) National laws and/or regulations and regulations established by regional economic integration organizations

42. National laws may include legislation passed to implement the Liner Code in a particular country or other shipping acts and regulations not related to the implementation of the Code. Article 47 (1) of the Code provides for Governments to adopt legislative or other measures as may be necessary to implement the Code. In order to enforce the provisions of the Convention on the Code at the national level, it would be necessary to enact appropriate national legislation. Some countries which have ratified or acceeded to the Code appear to consider their ratification or accession as sufficient to make the Code legally binding at the national level, while in other countries specific legislation has been enacted or administrative measures instituted in order to implement the Code. In general, developed market-economy countries of Europe which are Contracting Parties have enacted legislation which by and large provides for the Code to be applied on a self-management basis by the commercial parties concerned. On the other hand, some developing countries have enacted legislation which is largely designed to give effect to the principles of cargo sharing set out in article 2 of the Code but making it applicable to entire liner trades.

43. In addition to legislative measures taken by Contracting Parties to implement the Code, some countries which are not Contracting Parties have passed shipping acts or other types of shipping legislation which deal with, among other things, questions of freight rate negotiations and relations between shippers and shipowners in general. To some extent such legislation reflects principles of the Code with regard to the protection of shippers' interests. A few illustrative examples are given below.

44. In Australia, the Trade Practices (International Liner Cargo Shipping) Amendment Bill 1989, Part X, has recently been passed to repeal and replace Part X of the Trade Practices Act 1974. The key features of the Bill include (i) a transparent registration procedure which requires conference agreements in relation to outwards liner cargo shipping services to be publicly available and to contain minimum standards regarding service levels, frequency of sailings, etc., (ii) granting of only partial and conditional exemption of conferences (from Part IV of the Trade Practices Act) regarding anti-competitive and exlusionary practices, and (iii) a requirement that conferences and ocean carriers with a substantial degree of market power should negotiate with representative shipper bodies. The Bill encourages

shippers to associate in order to act as a counterbalance to the cartel powers of conferences.

45. The conference registration mechanism allows shippers to know about proposed conference agreements in advance and thus permits them to participate in negotiations regarding minimum service levels before a conference agreement is finally registered. Furthermore, in order to prevent carriers from unilaterally imposing freight rate increases without negotiation, the Bill requires ocean carriers to provide 30 days' notice to designated shipper bodies before changes in freight rate and service levels are effected, and shippers will have access to the Trade Practices Commission to resolve problems which may arise between them and ocean carriers.

46. The Bill does not regulate non-conference operators (except for a requirement to have an agent for the purpose of official communication). However, where non-conference operators are deemed to have substantial market power, they will be required to negotiate with an appropriate designated shipper body over arrangements for and the terms and conditions of carriage.

47. The Canadian Shipping Conferences Exemption Act 1987 contains provisions intended to encourage price competition between conference members, for the benefit of shippers. The legislation also attempts to maintain a certain openness in conference operations through requirements for the filing of information concerning rates and conditions of service. The Act exempts certain shipping conference practices from provisions of the Competition Act - Canada's anti-trust legislation. These practices include the use of loyalty contracts; terms for the use of service contracts (which are agreements between a shipper and a conference on the movement of a specific volume of cargo over a fixed time period at a negotiated price); cargo pooling and revenue sharing by member lines; and admission/expulsion of members. However, the Act does not apply to non-conference operators and it prohibits the following: (i) agreements between conferences and independent lines; (ii) negotiations of through rates between conferences and inland carriers; (iii) "predatory pricing"; and (iv) conferences requiring a commitment of 100 per cent of a shipper's cargo as a condition for a loyalty contract. The Act extends to conference members the right to take "independent action" (offering rates and/or services that are different from the conference tariff). It also contains provisions allowing a person to file a complaint alleging that a conference or interconference agreement or practice is likely to have, by a reduction in competition, the effect of producing an unreasonable reduction in service or an unreasonable increase in cost.

48. The Act provides for 30 working days' notice of tariff rate increases and 14 days' notice for new or increased surcharges. It also requires outbound conferences to meet with a designated group representing shippers when requested by the group and to provide sufficient information for the satisfactory conduct of the meeting. The Act is administered by the National Transportation Agency, which handles complaints filed under the Act with regard to conference or interconference agreement or practice which is likely to result in an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.

49. The New Zealand Shipping Act 1987, which applies to outward shipping only and which makes no distinction between conference and other shipping in its application, recognizes that commercial relations between shippers and carriers should be self-regulating while there is a satisfactory balance of advantage between the parties and it encourages consultations and negotiations between shippers and shipowners. Areas listed in the Act as being subject to consultation or negotiation include: (i) changes in general tariff

conditions; (ii) changes in the general level of tariff rates for major commodities; (iii) promotional freight rates; (iv) special freight rates; (v) the imposition of and change to surcharges; (vi) procedures for the supply of information by shippers in respect of cargo availability and the nature and volume of cargo to be shipped; (vii) the introduction of new technology; and (viii) changes in the pattern of services.

50. The Act empowers the Minister of Transport to direct ocean carriers to provide particulars of their rate and service agreements relating to New Zealand's outward trade, to give notice to shippers regarding impending changes in terms and conditions of service, to consult with shippers, etc.

51. The Act also empowers the Minister of Transport to initiate investigations and to issue directions to carriers engaging in "unfair practices". As defined in the Act, these include, in relation to outward shipping services: (i) the abuse of a dominant position by any carrier or association of carriers; (ii) any substantial failure on the part of a carrier to give reasonable notice to shippers of impending changes to the terms and conditions upon which the carrier carries goods; (iii) any unreasonable refusal or failure on the part of a carrier to enter into negotiations or consultations requested by any New Zealand shipper relating to the terms and conditions upon which the carrier carries goods.

52. In part one it was explained that, in the United States, liner freight rates were under direct government regulation. Negotiations between shippers' councils and conferences, as they exist in the external trades of other countries, are not exempted from the United States anti-trust laws. However, as required by the Shipping Act 1984 (chapter I, section 5), each conference agreement must provide for a consultation process designed to promote commercial resolution of disputes and establish procedures for promptly and fairly considering shippers' requests and complaints. While the section does not permit non-United States shippers' councils to consult with conferences in United States trades, some foreign shippers' councils have nevertheless interpreted the section as giving them a right to consult with conferences in United States trades. In addition, the Shipping Act 1984 permits shippers to form shippers' associations in order to negotiate service contracts.

53. In part one it was also mentioned that, while in many developing countries there has been much government involvement in the establishment and operation of shippers' organizations, there was generally a lack of legislation to enforce negotiations between shippers' organizations and liner conferences. From the responses to its questionnaire, the UNCTAD secretariat could not obtain information relating to such legislation in developing countries. It is however notable that, for example, in a study carried out in 1986 by the Economic and Social Commission for Asia and the Pacific (ESCAP), it was found that none of 11 developing countries surveyed in the ESCAP region had legislation regulating the relationship between shipowners and shippers' councils, although several of the councils indicated that they would welcome that type of legislation. 13/ This is in contrast with the legislative measures taken, for example, by Australia, Canada and New Zealand, as explained earlier.

54. With regard to regulations by organizations for regional economic integration, mention was made in part one of the European Economic Community (EEC) Council Regulations of 22 December 1986 compromising Regulation No. 4055/86, Regulation No. 4056/86, Regulation No. 4057/86 and Regulation No. 4058/86. Of the four EEC Council Regulations, Regulation No. 4056/86, laying down detailed rules for the application of articles 85 and 86 of the

EEC Treaty to maritime transport, is the most relevant with regard to shipper/shipowner consultations. Under these two articles, liner conferences would be prohibited, but considering that liner conferences have a stabilizing effect which assures shippers of reliable services, the Regulation exempts them from the Treaty's provisions on restrictive practices subject to, inter alia, the condition that "there shall be consultations for the purpose of seeking solutions on general issues of principle between transport users on the one hand and conferences on the other, concerning the rates, conditions and quality of scheduled maritime transport services. The consultations shall take place whenever requested by any of the above-mentioned parties." These principles to a large extent reflect the provisions of the United Nations Liner Code on consultations. 14/

J. Agreements between shippers' organizations and conferences

55. Apart from the United Nations Liner Code, national laws or regulations of regional economic integration organizations, there exist a number of agreements between commercial parties - conferences or organizations representing shipowners and shippers' organizations regarding negotiations. The most widely known agreements have been made between ESC and CENSA. These agreements include a Note of Understanding adopted in 1963 establishing mutual recognition of the merits of the conference system and of the use of consultations as a means of improving the conference system and solving problems which arise from it, and the Code of Practice for Conferences adopted by the ESC and CENSA in 1971.

56. Furthermore, ESC and CENSA have over the years agreed on a number of Joint Recommendations covering specific subjects or fields of conference practice such as model procedures for consultations between liner conferences and shippers' organizations, currency adjustment factors, port congestion surcharges, notices for increases in freight rates, heavy lifts, long lengths, etc. Many conferences also apply some of the principles contained in the Joint Recommendations in their relations with shippers' organizations outside ESC, although those shippers' organizations were not parties to the negotiations on the Recommendations.

57. Another illustrative example is the Agreement between the Regional Negotiating Committee of the Ministerial Conference of West and Central African States on Maritime Transport (MINCONMAR) 15/ on the one hand and conferences serving the trade between the United Kingdom and Continental Europe and West and Central Africa on the other. The Agreement sets out in considerable detail the negotiating principles and procedures to be followed. The following is a list of the Agreement's articles which indicates the scope of the Agreement: (1) Fair level of freight rates; (2) frequency of the freight rate reviews; (3) basic documents for the consultations; (4) timetable for despatch of the basic documents, and for the negotiations, (5) intermediate adjustments; (6) produce and sensitive commodities; (7) special conditions to be granted to land-locked countries; (8) inter-coastal tariff; (9) container tariffs; (10) implementation of freight rate adjustments; (11) independent accountants; (12) data to be communicated by the Lines for the independent accountant's report; (13) accountant's report; (14) presentation of the statistical and financial data in the accountant's report; (15) depreciation and return on capital; and (16) date of implementation and validity.

58. The Agreement recognizes the existence of the United Nations Liner Code and to a large extent the terms of the agreement draw upon the relevant provisions of the Code. It provides for an ad hoc committee for reconciling

disagreements. In the event of disagreement within the committee, the case would be put to an independent arbitrator appointed by the two parties and the arbitrator's decision would be binding on both parties.

59. Formal agreements between conferences and a shippers' organization have also existed in some Australian outbound trades. These have dealt with the imposition of BAF and CAF, particularly with regard to such matters as the basis for the calculation of the surcharge, review periods, periods of notice to shippers, trigger points, etc.

60. The above examples illustrate the type of agreements which can form a basis for negotiations. From the responses to the questionnaire, it appears that in many trades there are no such formal agreements between the conferences and shippers' organizations. In some trades there is an informal understanding on the general need to consult and on the provision of data to justify changes in freight rates, as well as on the need to give notice of proposed rate changes.

61. The existence of a formal agreement between a conference and a shippers' organization is useful in as far as it provides a framework for the parties to negotiate. Where the agreement specifies the provision of detailed data, it facilitates a certain transparency in the negotiations. Furthermore, even though the negotiations may not be binding, the agreement by itself encourages the parties concerned to respect the negotiating process and the results from it. For these reasons, shippers' organizations may find it advantageous to reach formal agreements with conferences on the question of negotiation procedures, and where such agreements do not exist, shippers may therefore propose to conferences to develop formal agreements. While, as pointed out before, many conferences wish to base their negotiatiations on the ESC/CENSA Code and Joint Recommendations, shippers' organizations outside ESC have a right to establish agreements which take into account their specific needs and circumstances and/or the relevant provisions of the United Nations Liner Code.

K. Loyalty arrangements

62. Traditionally, liner conferences have sought to restrict outside competition as far as possible, and this goal has been pursued partly through loyalty arrangements under which a shipper is given a lower rate on condition that all or a fixed portion of his cargo is committed to a conference or carrier, thus effectively tying the shipper to the conference or carrier. Three types of these arrangements have been in use - the deferred rebate system, the immediate rebate system and the dual-rate contract. 16/

63. Article 7 of the United Nations Liner Code authorizes the use of loyalty arrangements, and article 8 deals with dispensation - the granting of permission to "loyal" shippers to ship with non-conference carriers when the conference fails to confirm, within a period specified in the loyalty arrangement, sufficient space to accommodate a shippers' cargo within a period also specified in the loyalty arrangement.

64. The use of loyalty arrangements has not been consistent, for while they have been applied in some conference trades, they have not existed in others. Furthermore, some conferences have abandoned the system without any apparent detrimental effects. This has raised doubts regarding their necessity in the operation of liner conferences. In recent years, largely due to the large-scale availability of non-conference lines, loyalty arrangements have declined considerably.

65. In the United States, the Shipping Act of 1984 prohibits the use of loyalty contracts except in conformity with the United States anti-trust

laws. It would appear that, since the introduction of the Act, conferences have generally discontinued the use of loyalty arrangements for fear of violating the anti-trust laws.

66. On the whole, therefore, loyalty arrangements have lost their importance in conference trades. To some extent they are being replaced by service contracts which are mainly used in United States conference trades in accordance with the United States Shipping Act of 1984. There is no reliable information regarding the extent of their use outside the United States trades. In practice, it would appear that these contracts tend to benefit large shippers more than small ones. 17/

67. Outside the United States conference trades, some shippers have been advocating the improvement of loyalty arrangements or the abolition of 100 per cent loyalty and they have proposed instead that shippers be tied by a lower percentage (for example 70 per cent) of the cargo shipped during a certain period, thus allowing them to make use of non-conference services without being penalized by higher freight rates and to take advantage of flexibility in choosing the services best suited to their requirements.

L. Subjects covered under negotiations

68. Committee on Shipping resolution 59 (XII) lists items on which liner conferences should, upon request, hold consultations with shippers' organizations. As pointed out earlier, the subjects reconfirm those outlined in article 11 of the United Nations Liner Code and also principles contained in ESC/CENSA Joint Recommendation No. 20, entitled "Model procedures for consultations between liner conferences and shippers' organizations".

69. The responses to the secretariat's questionnaire indicate that, while most of the subjects listed are generally covered by negotiations, some are not. Many shippers' organizations noted that they negotiated the following items: (i) changes in general tariff conditions and related regulations; (ii) changes in the general level of tariff rates; (iii) rates for major commodities; (iv) promotional and/or special rates; (v) imposition of CAFs, BAFs and other surcharges and related changes in their methods; (vi) port congestion; and (vii) adequacy and quality of shipping services. However, only a few shippers' organizations have held negotiations on contractual arrangements, their establishment or changes in their form and general conditions, changes in the tariff classification of ports, procedures for the supply of necessary information by shippers concerning the expected volume and nature of their cargoes, and changes in the pattern of service. On the whole, the effects of the introduction of new technology in the carriage of cargo have hardly ever been discussed.

70. On the other hand, most conferences which responded indicated that negotiations were held on practically all the subjects listed. This apparent discrepancy in viewpoint between conferences on the one hand and shippers' organizations on the other regarding subjects being negotiated may be attributed partly to differences between them concerning what they consider to be meaningful negotiations. In particular, conferences generally appear to be more satisfied with existing negotiations than do shippers' organizations.

71. In some trades, freight rates for major commodities and promotional rates are negotiated mainly by individual shippers, trade associations or commodity groups. There is also a difference of approach with regard to general rate increases (GRIs) and surcharges. As a rule, GRIs are subject to consultations prior to their being applied, while in the case of surcharges

many conferences merely give notice and implement the surcharges without prior negotiations, although shippers' organizations may subsequently request negotiations to deal with a specific surcharge or the negotiations may take place in the context of GRIs.

72. In Committee resolution 59 (XII) and article 11 of the Liner Code, it is stated that consultations are to be held when requested. Several responses of shippers' organizations, as well as information obtained from other sources, provide examples of conferences which refuse to negotiate proposed rate increases or surcharges. It was also reported that in some cases during negotiations conferences take positions which amount to a refusal to negotiate.

73. In a number of trades, conferences have introduced the so-called "rate restoration". They have claimed that, due to non-conference competition experienced over the years, conferences were forced to accept rate reductions to meet the competition and that to "restore" freight rates to their levels existing before the prolonged rate reductions, "rate restorations", which are distinct from rate increases, have become necessary. Because "rate restorations" are considered by the conferences concerned to be different from rate increases, they are usually not subject to negotiations. Shippers' organizations generally view "rate restorations" as a hidden form of general rate increases and they are particularly dissatisfied at the fact that no recognized method has been established to determine a required "rate restoration".

74. It may be concluded that in most liner trades conferences are generally willing to engage in negotiations on many, although not all, of the subjects listed in resolution 59 (XII). However, during negotiations some conferences often take positions which are tantamount to a refusal to negotiate.

M. Implementation of UNCTAD recommendations

75. Paragraph 1 of resolution 59 (XII) made a number of recommendations concerning consultations between liner conferences and shippers' organizations, the application of changes in freight rates or surcharges and co-operation between shippers at the national, subregional or regional level; and paragraph 7 requested the UNCTAD secretariat to report to the Committee on Shipping at its fourteenth session on how the recommendations have been implemented.

76. Section L above has described subjects being covered under negotiations largely based on information obtained from liner conferences and shippers' organizations. In a note sent by the UNCTAD secretariat, Governments were requested to provide information on whether liner conferences had been invited to hold consultations with shippers' organizations, whether effective consultations were held on the items listed in paragraph 1 (a) of the resolution, and whether other actions indicated in paragraphs 1 (b), 3 and 4 had been undertaken. Governments were also asked to provide information regarding the extent to which each of the recommendations contained in the resolution had been implemented.

77. The list of Governments which responded to the note verbale is given in the annex. In many trades of countries which responded to the note, liner conferences had already established consultations with shippers' organizations on most of the subjects contained in resolution 59 (XII), and the Governments concerned therefore confirmed that the recommendations on consultations between conferences and shippers' organizations were already being implemented.

78. A few Governments noted that their countries had ratified the United Nations Convention on a Code of Conduct for Liner Conferences and thus subjects listed in paragraph 1 of resolution 59 (XII) were included in consultations between conferences and shippers. Other Governments indicated that their countries had enacted national laws which regulated consultations between conferences and shippers in compliance with resolution 59 (XII). Some Governments mentioned the existence of regulations of regional economic integration organizations, in particular EEC regulation 4056/86 of December 1986, which has already been discussed earlier and which provides for the protection of the interests of transport users.

79. Some Governments advised that they had informed the relevant liner conferences and shippers' organizations of the recommendations of resolution 59 (XII) and had encouraged them to adopt the measures recommended in the resolution.

80. It can be concluded from the replies that, on the whole, in the majority of those countries which replied, the subjects listed in paragraph 1 (a) of the resolution are the subject of consultations. Contrary to the recommendation contained in paragraph 1 (b) of the resolution, it would appear in general that conferences are not as a rule informing shippers or appropriate national authorities at the exporting end of the trade of the results of negotiations or consultations which they conduct with importers. With regard to co-operation between shippers and the establishment of appropriate contacts between shippers at both ends of the trade, these questions are discussed, respectively, in sections B and H of this chapter. The provision of round voyage information and the calculation and operation of BAFs and CAFs are discussed below in chapters II and III respectively.

II. NEGOTIATION PROCEDURES - GENERAL RATE INCREASES

A. Introduction

81. Available information on detailed procedures used in negotiations is largely related to negotiations on changes in the basic or general freight rates and on the imposition of surcharges. On the other hand, such matters as conditions of service, including changes in the pattern of service, effects of the introduction of new technology and the introduction of various additionals tend to be very specific to individual trades and there are no widely recognized negotiation procedures which have been developed to deal with these subjects, although these matters are increasingly attracting the attention of shippers in their consultations with conferences. This chapter is devoted to a discussion of changes in the general level of tariffs, while chapter III covers surcharges. It should be noted, however, that in the course of negotiations for changes in the general rate, many of the other subjects listed in resolution 59 (XII) may be touched upon because normally they have an impact on shipping lines' costs and revenues. It is important, therefore, for a shippers' organization to use negotiations on general rate increases as an opportunity for discussing conditions of service and other elements in the freight rate, particularly various additionals which generally receive little attention but which nevertheless may contribute significantly to the total freight rate.

B. The initiation of negotiations

82. General rate increases are introduced in order to cover overall increases in costs of operation or to make up for decreases in net revenue and are introduced for all items in the conference's tariff except for those which the conference may decide to exempt from a given general rate increase. They are distinguished from surcharges which are aimed at covering unforeseeable and temporary increases in specific costs, for example sudden increases in fuel prices or high levels of port congestion.

83. In some trades the two parties agree to hold negotiations on changes in the general or basic rate (GRI) periodically and on a regular basis, while negotiations on other matters may be held on an ad hoc basis. In other trades negotiations are usually held on an ad hoc basis, normally at the invitation of the conference side, to deal with GRIs or other matters of mutual interest. The general principle being followed in most trades is that negotiations may be held at the request of either party, as the need arises, without any established schedule or regularity.

84. In many trades, conferences maintain a local representative in their respective trading areas, as provided for in the Liner Code or in national legislation, in order to liase with shippers' organizations and to provide an information link and arrange for negotiations.

C. Notice to shippers

85. Normally, conferences give notice to shippers and shippers' organizations regarding a proposed GRI. Article 14 of the Liner Code provides that a conference should give a notice of not less than 150 days, or according to regional practice and/or agreement, to shippers' organizations and/or shippers of its intention to effect a general increase in freight rates. The period of 150 days has been considered to be too long, and in practice conferences give notice ranging from 30 days to a maximum of three months. In any case it is important for conferences and shippers' organizations to reach agreement on the period of notice. 18/

D. Information provided by conferences to justify changes in freight rates

86. Negotiations concerning GRIs normally apply to changes in the basic freight rate. The manner in which the levels of most basic rates were originally established is largely a historical question and is therefore not discussed in this report. However, it is worth mentioning that the setting of liner freight rates is based on a number of factors, including the principle of "what the traffic will bear" and cost factors. Article 14 of the Liner Code provides that, to expedite consultations on GRIs, a conference should submit, where practicable, to the participating parties an aggregate analysis of data regarding relevant costs and revenues which in the opinion of the conference necessitate an increase in freight rates. A similar requirement is contained in the ESC/CENSA Code.

87. The Liner Code stipulates that the cost of operation should be evaluated on a round voyage basis with the outward and inward directions considered as a single whole. Where applicable the outward and inward voyage should be considered separately. In reply to the secretariat's questionnaire, some respondents indicated that information provided was on a round voyage basis, while for others it was on a single-leg basis. Shippers' organizations should insist on the provision of round voyage information, although in the case of one-way conferences, as well as regards round-the-world services, this requirement may become difficult to achieve.

88. In the responses to the secretariat's questionnaire, a few conferences stated that there was no formula used to quantify required changes in freight rates. On the other hand, some shippers' organizations indicated that, while some conferences did supply data, others did not. Among conferences which supply data, the amount of detail varies considerably, with some conferences providing very general data such as national rates of inflation as a justification for GRI. Such general indicators are not adequate, because they fail to indicate developments in the conference's operations and profitability. Other conferences provide aggregate cost indices which show year to year percentage changes in major cost items experienced by member lines, for example manning, insurance, port expenses, stevedoring, agency commission, bunker, depreciation, maintenance and repair, ship stores, management, etc. The total percentage change for all member lines provides the so-called warranted GRI.

89. In evaluating such aggregated cost indices, it should be realized that in a conference there are large variations in efficiency and cost levels between lines, and the computation of averages tends to accommodate the operations of inefficient lines and thereby push up the aggregate costs. Furthermore, a proper aggregation of the data would require some weighting of the data for different lines in accordance with their relative shares of sailings or cargo liftings. In the responses to the secretariat's questionnaire, most conferences pointed out that the relative efficiencies of individual member lines were not taken into account. Another major weakness of the aggregate cost index method is that it only deals with the cost side, without indicating trends on the revenue side or the profitability of the lines. In this connection the Liner Code provides for the submission of data on both costs and revenue.

90. In some trades, shippers' organizations and conferences have agreed on a formula system whereby independent accountants appointed by the conference compile financial and operating statistics based on information supplied by the lines. These include data on costs, revenue, net revenue and various operational data which are intended to explain trends in the financial data

provided. The financial data is computed on the basis of an agreed rate of return as well as an allowance for the replacement of vessels and other related equipment.

91. In practice there is no specific arithmetical formula being used to determine a warranted GRI on the basis of the calculated deficit or surplus. This would have required more detailed data broken down, say, by commodity, cargo movements by origin and destination, etc. Furthermore, in view of the mixed composition of lines with different levels of operational efficiency, it would be impossible, without some weighting system, to establish a single formula which would ensure the same rate of profit for all the lines. The deficit/surplus figures therefore serve only to provide a basis for the conferences to propose a level of rate increases and for the shippers' organizations to evaluate the proposals.

92. However, the computation of the deficit/surplus figures raises some contention between conferences and shippers' organizations, particularly with regard to charges for depreciation and return on capital. Problems arise not so much as to the inclusion of these items in the financial statement but rather with regard to the basis for their computation. The following questions often arise: what should the ship replacement prices be for different types of ships; how should loans to buy ships be treated; what should be the estimated future useful life of vessels employed in the trade, the future resale or residual value of vessels and the return on capital to be used for trading conditions prevailing in a given period; and should the calculation of return on capital include chartered vessels.

93. All these matters are still the subject of debate and disagreement between conferences and shippers' organizations. It is essential, therefore, that financial data provided by the conferences be based on accounting principles which have been discussed with shippers' organizations.

E. Actions taken by shippers' organizations in response to proposed rate increases

94. The actions taken by shippers' organizations in response to proposed GRIs tend to vary widely. Where the negotiation process is not well established and the information supplied by conferences is not adequate or where a shippers' organization has not established adequate negotiating expertise, the shippers' organization's response may be limited to a simple protest without providing sound arguments. On the other hand, where a shippers' organization has developed negotiating experience and expertise, the response tends to be strong and would be based on a detailed analysis.

95. In their negotiations with conferences, the main objective of shippers' organizations is to contain freight rates, and therefore their general strategy is either to prevent any increases in rates from being introduced or to have them deferred or reduced from the levels proposed by the conferences. To achieve this, they have to show why proposed GRIs should be cancelled or deferred or reduced. This involves different approaches, including verifying and/or challenging the accuracy of the figures presented by the conferences, uncovering operational inefficiencies of the lines to show that cost increases should be absorbed by the lines themselves, and presenting data on general economic conditions in order to indicate the inability of the trade to bear freight increases.

96. Interpreting or verifying the accuracy of data presented by conferences will normally involve considerable difficulties. The figures presented by the

conferences are aggregates based on data supplied by individual member lines. They are computed by independent accountants but they do not constitute an audit. Even the independent accountants cannot therefore be certain of the accuracy of the data. At most they can express an informed opinion as to whether the figures are reasonable. However, it is essential for a shippers' organization to judge the reasonableness of the figures given by the conferences and to question whether observed cost increases were not avoidable. To facilitate its work, a shippers' organization may develop a comprehensive system of shipping statistics and information and carry out shipping investigation work. Initially, difficulties may arise in matching its data with the data presented by the conferences, since the sources, and possibly the underlying accounting principles, would be different. However, experience shows that once a shippers' organization has established a reputation for sound shipping investigation work, the results of its analysis are given serious consideration by the conferences in the negotiations.

97. The amount or type of data and information required is not fixed, although an attempt should be made to monitor most of the main costs incurred by shipping lines, voyage information and elements which constitute the lines' revenues. The following is a brief description of examples of possible sources of information for some of the data that may be collected and analysed, the difficulties that may be encountered in getting it, and some of the factors which may influence changes in the various types of data.

(i) Monitoring cost data

98. Fuel or bunker prices at a given port are influenced by its distance from the sources of crude oil, refining costs and market developments such as variations in total supply and demand. They are also influenced by types of purchase used - whether spot or contract. Contract prices are difficult to monitor, although changes in spot prices can indicate and/or relate to overall changes in contract prices. Market bunker prices are normally published in various maritime journals, as well as in reports of major oil companies. Voyage patterns of vessels serving a given liner trade would indicate the main bunkering ports used by the lines of the conference. While shipowners cannot influence the price of fuel, they can nevertheless control the amount of fuel consumed through slow steaming, as well as changes in engine designs in order to achieve fuel efficiency. Shipowners may also improve fuel efficiency by fitting auxiliary equipment.

99. Manning or crew costs include wages, costs of social insurance, pensions, national insurance contributions, victualling and repatriation or crew travel. Crew costs are normally influenced by working conditions laid down by maritime unions or regulated by authorities in the countries of registry. They therefore vary with the flag, which determines rates of pay, conditions of service and manning levels. The composition of nationalities in the crew would thus influence total crew costs, since crew of different nationalities are usually paid different rates. Information on crew costs may be obtained from maritime unions, authorities in the countries of registry and also from published sources.

100. The cost of insurance mainly includes insurance for total loss and damage to hull and machinery and protection and indemnity (P & I) insurance against liability to third parties. Rates paid by individual shipowners for hull and machinery protection is influenced by the shipowner's claims record and the claimed value of the vessel, and the latter is strongly influenced by freight market conditions and the age of the vessel. Indicative levels for the hull and machinery protection rates can be determined on the basis of current levels of insurance premia as quoted for a first class owner. P & I

costs are also based on the shipowner's claims record, the type of cargo being carried, the flag of registry, the nationality of the crew and the trade route being served. Estimates of P & I costs may be based on rates quoted by leading mutual clubs. The relevant data may be sought from marine insurance broking companies or from P & I clubs, although these sources may not be easily accessible to shippers' organizations.

101. General administration tends to be a difficult cost item to monitor and is to a large extent influenced by the size of a company's fleet. Similarly, costs of repairs and maintenance are difficult to monitor, as they are dependent on the upkeep of the vessels to standards desired by the shipowner and the classification society. They also vary with the quality and age of the vessel and the number and quality of the crew. Some indicative information on trends in these costs can be obtained from individual shipowners. Chartering costs could be obtained directly from prevailing market charter rates, which are widely published in maritime journals.

102. Port charges represent a substantial part of total costs and they include port dues, agency and other service fees and charges for specific port services such as pilotage and towage. Cargo handling costs are determined by the size or volume and the characteristics of the cargo handled. In many ports, cargo is handled at contractual rates. Information on port charges and cargo handling costs can generally be obtained from published port tariffs, port information handbooks and port agents, shipowners and other sources (e.g. BIMCO Bulletin).

103. With regard to depreciation, the problems concerning its calculation have been mentioned earlier in Section D. Given the contentious nature of this item, it is essential for a shippers' organization to reach agreement with conferences on the principles to be followed in the computation. In particular, there should be agreement on whether depreciation should be based on historical costs or current replacement value, periods of depreciation to be used, whether a straight line or a reducing balance method is to be used and the residual value to be used. A shippers' organization should also follow trends in newbuilding and second hand prices, interest rates on ship loans, and scrap values. This information is usually published in shipping journals (e.g. Fairplay, Lloyd's List, etc.).

104. The rate of return on capital is based on the value of capital employed and this includes the value of ships, containers, chassis, fork lifts and possibly shore installations. The rate of return to be used should also be a subject of agreement. Rates of return on capital are variable and a shippers' organization may monitor prevailing rates in other economic sectors in order to assess the fairness of the rates claimed by the conferences. These rates are usually available in financial publications.

(ii) Monitoring revenue data

105. Gross revenue can be estimated by applying published tariffs to individual commodity movements. This means a shippers' organization should mantain data on cargo movements broken down by vessel, commodity type, weight and origin and destination. However, considerable difficulties normally arise in obtaining accurate revenue estimates, since the published freight rates are bases to which a number of additional charges or adjustments must be added or deducted. In addition, rates applicable to a particular commodity may vary according to packing or product classification. Some conversion of tonnage figures to freight tons may also be needed. To a large degree these problems are minimized if a shippers' organization has access to freight manifests, from which most of the required data could be obtained.

106. To obtain net revenue, rebates and commissions are deducted from the gross revenue. Traditionally, shippers have received confidental rebates in return for loyalty agreements, and in addition in recent years non-conference competition has resulted in conference shipments effectively being provided at some discount on the official tariff. Information on such rebates is not readily available and can generally only be obtained from the shippers themselves.

(iii) Monitoring voyage data

107. The voyage data has the function of helping to explain the validity of the financial figures. Shippers' organizations therefore usually find it essential to monitor changes in the voyage data in order to evaluate the accuracy of the data reported by the conferences. Information on round voyages indicates the frequency of sailings in the trade. Such information is normally available from port authorities, customs documents and ship's manifests. The relevant information can also be obtained from shipping journals (e.g. Lloyd's List and the Journal of Commerce). Information on ports of call can be obtained from several publications or counsultancy services (e.g. Lloyds Maritime Information Services).

108. Ships' profiles such as deadweight tonnage, age, bale capacity, etc., are usually available from port authorities, the shipping lines involved and other sources (e.g. Lloyds Register). Data on cargo liftings would include import and export data broken down by ship, port of loading or unloading, country of origin and destination, type of commodity, quantity (weight), type of packing and number of containers. The main source would be ships' manifests. Voyage days and number of ports called at by the average ship show the voyage times (number of days per voyage) and the time spent in port. For each ship and port of call it would be necessary to establish date of arrival, previous port of call, cargo discharged, cargo loaded, cargo handling rates, date of departure and next port of call. Such data would be available from port authorities and cargo manifests.

109. The collection of the data described above suggests that a large amount of resources would be required, and it becomes imperative for a shippers' organization to develop a comprehensive shipping data base. To a large extent this can be facilitated by the use of electronic data processing. Furthermore, it is apparent that access to freight manifests is an important requirement for a shippers' organization to obtain most of the required data. In view of this, Governments in developing countries may assist shippers' organizations by requiring shipping lines to deposit copies of freight manifests with a designated shippers' organization. In developing countries which have established national shipping lines, such lines can be asked to provide financial and voyage data pertaining to their operations.

110. While shippers' organizations may compile their own voyage data primarily in order to check the accuracy of the figures presented by the conferences, such data is also analysed in order to assess the efficiency of the lines' operations and thus establish arguments for opposing proposed rate increases on the grounds that the cost increase or reduction in profits experienced by the conferences are caused by the lines' inefficiencies and should therefore not be paid for by shippers through increases in freight rates. The analysis can also be used by a shippers' organization to suggest to conferences or port authorities cost-saving measures that may be adopted in order to minimize the need for freight rate increases.

111. Examples of the type of analysis regarding the lines' efficiency that can be performed include the estimation of ship space utilization. Such an assessment of space utilization is important, since a decline in space utilization means that there is less revenue to cover ship costs and overheads and this prompts demands for rate increases. If, therefore, a shippers' organization can show that there is excessive underutilization of ship space, it can suggest to a conference that it take measures which would increase utilization (e.g. through rationalization of sailing schedules) and thereby minimize the need for rate increases. In some trades information on ship space utilization is supplied by the conferences themselves as part of the data which is presented to justify general rate increases.

112. However, in part one it was pointed out that in some cases shippers may attach greater importance to the level of service than to levels of freight rates and that shippers may be prepared to pay higher freight rates in return for higher service frequency (which may entail lower capacity utilization). It is therefore necessary for a shippers' organizations to find an appropriate balance between all the requirements of different shippers.

113. Related to space utilization are the total voyage times, which also have an important bearing on a shipowner's profits. The quicker the turnround times, the more economical are shipping services, although the level of fuel costs may set limits on the extent to which faster voyage times become beneficial. An analysis of voyage times, together with volumes of cargo discharged and loaded at each port, may indicate the extent to which losses are caused by long voyage times, and too many port calls. A shippers' organization may suggest to a conference that it reduce the number of port calls, the bunching of sailings or the time spent in port. The development of containerization has generally achieved reductions in turnround times, leading to cost reductions. Furthermore, shipping lines have made efforts to rationalize their services by pooling arrangements and the establishment of consortia in order to reduce costs. Shippers' organizations often monitor such developments in their trades in order to assess their possible impact on freight rates.

114. Some insight into lines' efficiency may also be obtained by comparing average volumes of cargo and average freight revenues per voyage. Given the number of voyages and the total volume of cargo carried by lines over a given period of time, the average volume of cargo per voyage may be computed. Based on the data on freight rates, the freight revenue per voyage can be estimated, and it can then be determined whether the revenue earned per voyage justifies the sailing frequencies offered by the conference or whether the existing sailing frequencies should be rationalized.

115. Another area of possible analysis by a shippers' organization is port productivity. This may involve monitoring the average cargo throughput and cargo handling performance at relevant ports in order to identify and propose remedial actions to be taken to prevent the imposition of congestion surcharges or to contain general rate increases.

(iv) Monitoring general economic indicators

116. In addition to assessing the accuracy of the data presented by the conferences and identifying elements of inefficiency in lines' operations, shippers' organizations may compile data on general economic or commercial indicators such as trends in export commodity prices, trends in the demand for exports in import markets, the existence of competition for exports from other sources, comparative levels of freight rates charged in different trades,

etc. They may also attempt to assess the impact of proposed freight increases on a country's export performance and on the national economy in general. This type of commercial information may form an important part of the negotiations. Quite often, for example, conferences accept the necessity to exempt certain export commodities from general rate increases because of the low level of prices in import markets or due to competition from alternative sources. The importance of these commercial considerations cannot be overemphasized, since in many cases they exert a strong influence on the size of the rate increases which are finally agreed.

117. In general, shippers' organizations use all the three approaches discussed here, namely verifying the accuracy of the conferences' data, identifying areas of inefficiency in the lines' operations and presenting various economic or commercial indicators to support arguments against proposed rate increases. The relative emphasis placed on each of these approaches during negotiation sessions with conferences would depend to a large extent on the circumstances surrounding each specific rate increase proposal.

118. In recent years, as a result of outside competition, freight rates paid by shippers have largely been determined by market forces, even though conferences have continued to supply cost data to justify general rate increases. As a result of this, it would seem that the monitoring of general economic indicators as well as market information would enhance the ability of shippers' organizations to negotiate with conferences. Market information could include the extent of non-conference competition in terms of the quality of services provided as well as levels of freight rates charged. Furthermore, the departure of freight rates charged from official tariffs justifies shippers' organizations putting pressure on conferences to restructure tariffs in order to make them more compatible with existing market rates.

119. In addition to the approaches outlined above, some shippers' organizations have countered some proposed rate increases by seeking alternative liner services which could offer lower freight rates. In certain cases this approach has succeeded in inducing conferences to reduce or cancel proposed rate increases. However, this approach would only be feasible where a shippers' organization can exercise control over a significant part of shipments in the trade concerned.

III. PROCEDURES ON SURCHARGES AND OTHER RELATED MATTERS

A. Introduction

120. Articles 16 and 17 of the United Nations Liner Code contain provisions relating to surcharges and currency changes respectively. In their replies to the secretariat's questionnaire, some respondents indicated that negotiations were being held on tne imposition of CAFs, BAFs and other surcharges. However, the responses also revealed that, while in principle the surcharges were indeed negotiable, in practice most changes in surcharges were imposed without prior negotiatiations between conferences and shippers' organizations. There is, therefore, a basic difference between general rate changes and surcharges with regard to the mechanism for their introduction and implementation. Only a few shippers' organizations hold negotiations with conferences on the methods for calculating surcharges, as well as the procedures for their introduction. Some shippers' organizations monitor movements in surcharges and, where appropriate, hold discussions regarding the validity of a given surcharge even though such discussions may be held only after the surcharge has already come into force. On the other hand it seems that many shippers' organizations do not hold any negotiations with conferences either on the methods used or on the validity of individual levels of surcharges.

121. While general rate increases may attract much attention, surcharges sometimes add up to well over 50 per cent of the total freight bill. There are many charges and additionals applied in the liner trades, although the ones which are most common are CAFs, BAFs and port congestion surcharges. These surcharges, particularly CAFs and BAFs, are based on some fairly well recognized formulae which permits some possibilities for shippers' organizations to monitor and evaluate them. This chapter discusses these three surcharges and also identifies others which are currently in use. The CAF, BAF and port congestion surcharge have been examined extensively in earlier reports by the secretariat, 19/ and therefore the present report will only present summaries of the main findings of the previous reports.

B. Currency adjustment factor (CAF)

122. The CAF is used by liner conferences to adjust for losses or gains which may arise from changes in exchange rates between the tariff currency and other currencies in which the lines incur their operating expenditures. Article 17 of the United Nations Liner Code provides for a CAF on the basis of the principle of "no loss no gain". The formula commonly used to calculate CAFs in many trades is based on ESC/CENSA Recommendation No. 11. 20/ The approach used is to calculate percentage changes in the value of currencies in which the lines incur their expenditures against the value of the tariff currency, that is the currency in which the conference's published tariff is quoted. The changes are computed between a selected base period and the current period. The computed percentage changes are applied to weighting factors to obtain the required CAF.

123. Normally the CAF is reviewed at selected time intervals which range from one week to one month. Furthermore, conferences have established trigger points which are the minimum sizes of changes in exchange rates that have to be reached before an existing CAF level can be changed. Conferences generally give notice to shippers prior to the application of a new level of CAF. Following the calculation of a required CAF, there is usually a waiting period ranging from a week to one month before the new CAF becomes effective. It may

be noted that review periods, trigger points, and waiting periods before calculated CAFs become effective are not the same for all conferences, while the variations in these elements have a significant influence on the levels of CAF which are applied. The CAF is therefore not necessarily equitably applied among different trades.

124. The frequency at which CAF levels are reviewed and changed is quite high, and this tends to preclude the holding of negotiations between conferences and shippers' organizations. In this connection, ESC/CENSA Joint Recommendation No. 11 suggests that Conferences should consult with shippers' organizations on the method or formula for calculating CAFs in order to reduce the necessity for individual consultations at the time of changes in exchange rates except when the conference alters the weighting factors or base exchange rates. Consequently, after the parties have agreed on the underlying method of calculation, the individual CAFs become automatically applicable.

125. Some shippers' organizations outside the ESC which were not consulted in the formulation of the CAF formula in the Joint Recommendation have expressed dissatisfaction at the fact that the formula has been imposed unilaterally by the conferences in their trades. Other shippers' organizations have stated that the methods and formulae used are not explained by the conferences and are generally not understood by the shippers.

126. The proportions of currencies in which lines incur their expenses are likely to change over time as the composition of the lines operational costs and their sources of supplies change. As a result, unless the weighting factors used in the ESC/CENSA formula are changed correspondingly, the CAF would not accurately reflect changes in actual costs in terms of the tariff currency. Some conferences tend to maintain the same weighting factors for long periods of time, and shippers' organizations may challenge this practice on the grounds stated above. Conferences also tend to maintain the same base exchange rates for long periods. For example, some conferences have continued in the 1980s to use 1973/74 exchange rates as a basis for CAF calculations. The ESC/CENSA Joint Recommendation suggets the setting of new base exchange rates if the CAF is incorporated into the base freight rates or if there is a general rate increase or when there is a change in the weighting factors.

127. However, the most difficult problem facing shippers' organizations, including those who agree with or are familiar with the methods, is their inability to verify the validity of the input data used and hence the accuracy of any given CAF. Shippers' organizations are generally in a position to monitor changes in exchange rates since these are readily available, but information on weighting factors is not readily available. As was pointed out earlier, reliable information on the weighting factors is essential, since to be accurate the CAF has to reflect the actual relative proportions of the cost currencies.

128. The ESC has rescinded the ESC/CENSA Joint Recommenation No. 11 on CAFs and has been advocating the abolition of CAFs. The ESC has explained that no other industry apart from shipping seeks to off-load the full burden of currency risks on to its customers and also that there now exist currency hedging mechanisms which are widely available to shipowners to deal with currency risks. Several other shippers' organizations have expressed full solidarity with ESC's approach and also advocate the abolishing of CAFs.

129. On the other hand CENSA has noted that while the structure of some conference trades may not necessarily require the use of CAFs, it supports the right of conferences to maintain the principle of the CAF which is to keep

unforeseen cost fluctuations (up or down) out of the tariff. CENSA has claimed that if there were no CAFs, under a situation of large fluctuations between the tariff currency and the basket of currencies in which carriers incur costs, the effect would be either that shippers would pay more in local currencies than would be needed to meet the shipowners' costs or that the conferences would have to react by imposing general rate increases at short intervals to recover their fluctuating losses. According to CENSA, the CAF mechanism makes it possible for such risks to be shared. With regard to the possibility of currency hedging, CENSA has indicated that, among other obstacles, this could only be feasible if shippers commit cargo volumes by area and freight paying currency well in advance (15 to 24 months) in order to enable the carriers to arrange the right amount of forward cover. They have also noted that some of the local currencies concerned might not have any forward exchange market. This issue will need to be further considered in ongoing negotiations between conferences and shippers' councils.

C. Bunker adjustment factor (BAF)

130. Liner conferences use the BAF to ensure that member lines are compensated for changes in the cost of fuel. There are two main alternative methods for calculating the BAF. The first method uses percentages and is based on the principle for calculating a required change in the general freight rate using an aggregated cost index, as discussed in chapter II. In the cost index, if only bunker costs are considered, the relevant increase in cost would be the BAF. Under this method, the weighting factor used is the share of bunker costs in the total voyage costs, which is also termed the bunker cost incidence factor. An alternative weighting factor used is the percentage of bunkers to the lines' freight revenue. 21/

131. The second method estimates the absolute sum of money per freight ton required to offset a unit change in bunker price. The formula used to arrive at the sum of money (BAF) per freight ton is:

$$\frac{\text{Current bunker fuel price less base bunker price per ton} \times \text{fuel tons consumed per voyage}}{\text{Freight tons per voyage}}$$

132. Like the CAF, the BAF is reviewed regularly at intervals varying according to conference between a week and three months. Trigger points are established between one and three per cent, and the length of notices to shippers is also variable between conferences. There is also a waiting period between the calculation and the announcement of the introduction of a BAF or its modification and the date on which it becomes effective. The variations in these elements between conferences indicates that like the CAF, the BAF is probably not equitably applied among conferences. Furthermore, trigger points and waiting periods may not be identical for BAFs and CAFs even within a given conference.

133. On the monitoring of the BAF, shippers' organizations also suffer from the inability to verify data on bunker prices and weighting factors. Lines may purchase fuel on contract terms, and therefore information on prices actually paid may not be readily available to shippers' organizations, although spot or published prices my provide an indicator. Similarly, reliable information on weighting factors may not be readily available due to the confidential nature of the individual lines' financial accounts.

D. Port congestion surcharge

134. Port congestion surcharges are used by conferences to recover extra costs which arise from what they consider to be excessive port delays. These surcharges gained importance during the 1970s but are currently little used. While their importance has declined at the present moment, significant and widespread port congestion could recur in future in certain trades. For this reason it is justified to continue to pay attention to the methods used to calculate and apply port surcharges, as well as to emphasize the need for negotiations. In the United Nations Liner Code, the principles governing negotiations on surcharges are defined in article 16. ESC/CENSA Joint Recommendation No. 1 lays down general principles on the application of congestion surcharges but provides no specific formula for calculation. While many conferences used to apply congestion surcharges in the 1970s, generally the calculations were not based on any well recognized formulae. The main exception is the formula adopted by the Association of West India Trans-Atlantic Steam Ship Lines (WITASS). This method calculates a congestion surcharge on the basis of a fixed sum of money per freight ton as follows:

$$\frac{\text{Extra days due to congestion} \times \text{Average daily cost of all vessels arriving during period of congestion}}{\text{Total number of freight tons discharged and loaded during period of congestion}}$$

Extra days due to congestion for a given vessel are expressed as the difference between actual time in port during congestion and time in port during normal conditions. A period is considered as being normal when in the opinion of the lines the conditions were representative for the port concerned.

135. In its report entitled "Port congestion surcharges: underlying principles" (TD/B/C.4/279), the UNCTAD secretariat proposed a set of principles to be applied in levying port congestion surcharges. It is evident, therefore, that the search for feasible principles and methods for calculating and applying port congestion surcharges should be given attention by shippers' organizations in their consultations with conferences, although there may not be an immediate need for such surcharges.

E. Other charges

136. In addition to the CAF, BAF and port congestion surcharge, there are a number of other charges or additionals, many of which have come into use as a result of containerization. These include terminal handling, LCL handling, out-of-gauge cargo charges, equipment handover charges, long-length charges, heavy-lift charges, transhipment charges, etc. In some cases these charges form a very substantial part of the total freight rate. Shippers, especially in developing countries, may not be familiar with some of these charges and this may lead to a lack of appreciation of their overall importance in the freight rate. It is therefore essential for shippers' organizations to expand their coverage of matters under consultation to include all charges and additionals. In particular there is a need for shippers' organizations to ensure that the various additionals have not already been included in the line's "normal" costs and thus that shippers do not have to pay for the same costs twice, first as part of the basic freight rate and secondly as additional charges.

F. Other related matters

(i) Commodity rates and promotional rates

137. There are no set procedures for negotiations on freight rates for individual commodities. These are usually negotiated with individual shippers or trade associations, and their levels are determined by a number of factors including the volume of the commodity, its unit value, seasonality or frequency of shipment, etc. However, as already indicated, during negotiations for general rate increases, a shippers' organization may present data on general economic conditions or commodity prices in order to obtain special treatment or exemption for individual commodities from general rate increases.

138. Promotional rates are reductions in freight rates on a particular item to an exceptionally low level for a temporary period. This is intended to allow a new product which cannot be shipped at the normal rate, including an export to a new market, to be exported in larger quantities which would in turn increase the volume of production and reduce production costs and thus enable the product eventually to bear its normal freight rates. Article 15 of the Liner Code provides for procedures to be followed in establishing promotional freight rates. Since the introduction of new products into a trade is mutually beneficial to both the lines and shippers, it is in the interest of both parties to reach agreement on procedures and information that would facilitate the introduction of promotional rates. These types of rates are particularly important not only in promoting exports to developed countries but also in opening up new trades between developing countries.

(ii) The basis and sequence for applying surcharges and additionals to the basic rate

139. Changes in the basic freight rate and changes in surcharges and in other additionals are generally determined and negotiated separately. However, these various elements have to be added together in order to obtain the total freight rate. The sequence in which the different surcharges and additionals are to be applied to the basic rate and to each other is important, since different sequences will produce different totals.

140. The application of a single surcharge to the basic rate when considered in isolation would not pose serious problems.

141. However, it is not a straightforward matter, when other surcharges and additionals are considered, to determine in what sequence they should be applied to the basic rate and to each other in order to preserve the "no loss no gain" principle. In practice, different conferences have used alternative sequences. In recent years the European Shippers' Councils have proposed a standard sequence which may be used universally. The sequence (referred to as the Liverpool formula) offers options for calculating total freight when the surcharges and additionals are either in percentage form or in fixed amounts per freight ton. To a large extent the Liverpool formula tries to minimize the erroneous cumulation of surcharges and additionals. The ESC has pointed out that the majority of conferences operating from Europe have adopted the formula, and it continues to discuss its possible application with conferences which have not yet adopted it.

142. The principle of employing a standard sequence is advantageous, since it would promote more equity in freight calculations. It would also simplify calculations for agents, forwarders, shippers and other users who have to deal with several conferences or shipping lines. A sequence which minimizes the erroneous cumulation of surcharges is preferable, given that the individual

surcharges are defined mainly in relation to the basic rate and not to other charges. The Liverpool formula does offer an opportunity for uniformity in freight calculation, although its adoption outside Europe should be a subject of consultation and agreement between the relevant conferences and shippers' organizations.

(iii) Incorporation of surcharges into the basic rate

143. Some conferences incorporate either the CAF or the BAF or both into the basic rate. Some have done so only a few times, while others do so regularly, most often when there is a general rate increase or when new base bunker prices are established. On the other hand, there are many conferences which have never incorporated the surcharges. Some shippers' organizations are not in favour of incorporation, mainly because they consider that surcharges are meant to be temporary and should not become permanently embodied in the basic freight rate. They also object to incorporation because it could affect the levels of the surcharges which are finally arrived at.

144. The controversy over the incorporation of surcharges is closely related to the difficulties of verifying the accuracy of the surcharges themselves. Those who oppose incorporation consider that permanent errors may be introduced into the basic rate if erroneous surcharges are incorporated into it. It may also be noted that a number of conferences have confirmed that, while incorporation may simplify freight calculations, the conferences do not incur any financial losses if surcharges are not incorporated. Given the contentious nature of incorporation, it is important for conferences and shippers' organizations to reach agreement on any decisions on incorporation.

(iv) Freight rates in multimodal transport

145. The focus of the present report has been on negotiations on ocean freight rates and surcharges. However, account must be taken of developments in international multimodal transport services in which cargoes are carried by shipping lines on multimodal transport documents. These developments have implications for the conduct of negotiations between shippers' organizations and conferences.

146. The United Nations Liner Code deals with (ocean) liner conferences, and references to freight rates and surcharges in the Code are made in relation to ocean transportation. The relevant provisions of the Code may therefore be interpreted as being applicable only to the sea-leg portion in the case of multimodal transport. However, article 11 on consultations would appear to be sufficiently wide in scope to include consultations on the setting up of freight rates for multimodal transport by conferences. On the other hand, it has been pointed out that conferences may not be responsible for justifying cost increases applicable to those segments of service in a multimodal transport service which are provided by parties outside the conference, although where a non-conference multimodal transport operator is controlled or beneficially owned by a liner conference member, shippers may request consultations on the freight rate offered by such a multimodal transport operator. 22/

147. In general no consensus has been established on the mechanisms for consultations between shippers' organizations and conferences regarding freight rates for multimodal transport services. Future international negotiations, such as those within the framework of the Review Conference on the Code, may provide some guidance on this issue, although in the meantime shippers' organizations and conferences in individual trades may consult and reach agreement on the matter.

Notes

1/ See inter alia, "The liner conference system", 1970, (TD/B/C.4/62/Rev.1), "The effectiveness of shippers' organizations", 1977, (TD/B/C.4/154) and "Protection of shipper interests", 1978, (TD/B/C.4/176); "The relationship between shippers at both ends of a trade" 1979, (TD/B/C.4/180); "Formation and strengthening of shippers commodity groups", 1979, (TD/B/C.4/188); "Protection of shipper interests: outstanding issues", 1983, (TD/B/C.4/239); in relation to multimodal transport, see "Liner conference container rules", 1980, (TD/B/C.4/207); "The relationship among interested parties in multimodal transport", 1982, (TD/B/C.4/243).

2/ See UNCTAD I, E/CONF 46/141, vol. 1, recommendation IV 22, Annex a, reprinted in TD/B/C.4/6, Annex V.

3/ See UNCTAD resolution 66 (III) - Draft code of conduct for liner conferences, third session of UNCTAD, Santiago, Chile (1972).

4/ See the United States Shipping Act of 1984.

5/ The impact of the Act has been evaluated in a recent report by the United States Federal Maritime Commission (FMC) - "Section 18 Report on the Shipping Act of 1984".

6/ A service contract may include various provisions such as obligations for the shipping lines regarding ports to be served, frequency of sailings, types of vessels to be provided, type and volume of cargo to be shipped and the time period within which shipment is to be made, level of freight rates to be applied to such shipments, etc.

7/ See "Issues for the Review Conference" (TD/CODE.2/4), report by the UNCTAD secretariat.

8/ See TD/CODE.2/4

9/ Examples of such information are discussed in chapter III of this part.

10/ For a description of shipping investigation work, see TD/B/C.4/176.

11/ The role of independent accountants is discussed in section G below.

12/ See the report by the UNCTAD secretariat, "The relationship between shippers at both ends of a trade" (TD/B/C.4/180).

13/ See ESCAP, "Report on the survey of shippers' councils in the ESCAP region" (SPJU/CENSO(VIII)/1).

14/ See Official Journal of the European Communities, L378, vol. 29, 31 December 1988, pp. 4 - 13.

15/ MINCONMAR is a subregional organization with a membership of 25 countries. The duties and activities previously performed by the Regional Freight Rate Negotiating Committee were transferred to the Union of African Shippers' Councils (UASC) in 1988.

16/ For a detailed discussion of these arrangements, see the report by the UNCTAD secretariat "The Liner Conference System" (TD/B/C.4/62/Rev.1).

17/ See FMC, Section 18 Report.

18/ See also, in this connection, documents submitted to the Liner Code Convention Review Conference: "Views of governments on the Review Conference" (TD/CODE.2/3); "Issues for the Review Conference" (TD/CODE.2/4); as well as "Guidelines towards the application of the United Nations Convention on a Code of Conduct for Liner Conferences" (UNCTAD/ST/SHIP/1).

19/ For detailed analyses of the CAF and BAF, see "Formulae and methods used for calculating and applying liner conference surcharges" (TD/B/C.4/265), and for port congestion surcharges see "Port congestion surcharges: underlying principles" (TD/B/C.4/279).

20/ The Joint Recommendation contains two alternative formulae, the main difference between them being the weighting factors used. For detailed discussion of both alternative formulae, see TD/B/C.4/265.

21/ To arrive at the average bunker prices for the whole conference, the cost of bunkers must be aggregated over all the relevant ports used by the lines and over all the member lines. For details of the aggregation procedure, see TD/B/C.4/265.

22/ The treatment of multimodal freight rates in the context of the Liner Code is discussed in TD/CODE.2/4.

Annex

LIST OF GOVERNMENTS, SHIPPERS' ORGANIZATIONS AND LINER CONFERENCES WHICH PROVIDED INFORMATION IN RESPONSE TO THE UNCTAD SECRETARIAT'S QUESTIONNAIRE

A. Governments

1. Australia
2. Congo
3. Cote d'Ivoire
4. Denmark
5. Finland
6. German Democratic Republic
7. Germany, Federal Republic of
8. India
9. Iraq
10. Ireland
11. Japan
12. Kenya
13. Mauritius
14. Netherlands
15. New Zealand
16. Norway
17. Oman
18. Poland
19. Portugal
20. Spain
21. Sweden
22. Thailand
23. Uruguay
24. USSR

B. Shippers' organizations

1. Australian Exporters' Shipping Association (this organization has replaced the former Australian Shippers' Council)
2. Conseil Burkinabé des Chargeurs
3. Cameroon National Shippers' Council
4. Canadian Shippers' Council
5. Office Ivoirien des Chargeurs
6. European Shippers' Councils
7. Federation of ASEAN Shippers' Councils
8. Ghana Shippers' Council
9. Hong Kong Shippers' Council
10. Indonesia National Shippers' Council

Annex
page 2

11. Japan Shippers' Council
12. Korean Shippers' Council
13. Malaysian National Shippers' Council
14. Nigerian Shippers' Council
15. Papua New Guinea Shippers' Council Inc
16. Philippine Shippers' Council
17. Conseil Senegalais des Chargeurs
18. Singapore National Shippers' Council
19. The Southern India Shippers' Association
20. Central Freight Bureau of Sri Lanka
21. Shippers' Committee, Board of Trade, Thailand
22. Conseil National des Chargeurs Togolais
23. Union of African Shippers' Councils (West and Central Africa)

C. Liner conferences

1. Australia/Eastern USA Shipping Conference
2. Australia Northbound Shipping Conference
3. Brazil/Europe/Brazil Freight Conference
4. Brazil-Mediterranean-Brazil Freight Conference
5. Canadian Continental Eastbound Freight Conference
6. Associated Central West Africa Lines (CEWAL)
7. Continent West Africa Conference (COWAC) and MEWAC
8. Europe Argentina Freight Conference
9. European South Pacific and Magellan Conference
10. Far Eastern Freight Conference
11. India-Pakistan-Bangladesh Conferences
12. Japan/India-Pakistan-Gulf/Japan Conference
13. Japan/Thailand Freight Conference
14. Sabah-Brunei-Sarawak Freight Conference
15. Thailand/Japan Conference
16. United Kingdom/West Africa Lines (UKWAL)
17. The Association of West India Trans-Atlantic Steam Ship Lines (WITASS)

UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
GENERAL

TD/B/C.4/333
29 March 1990

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Committee on Shipping
Fourteenth session
Geneva, 21 June 1990
Item 5 of the provisional agenda

DEVELOPMENTS IN WORLD SHIPPING

Imbalance between supply and demand in world shipping

Report by the UNCTAD secretariat

GE.90-50986

CONTENTS

		Paragraphs
	INTRODUCTION	(i) - (v)
Chapter		
I.	THE IMBALANCE BETWEEN SUPPLY AND DEMAND IN WORLD SHIPPING: RECENT DEVELOPMENTS	1 - 20
II.	CONCLUSIONS AND RECOMMENDATIONS	21 - 30

ABBREVIATIONS

AWES	Association of West European Shipbuilders
cgt	compensated gross tons (based on new tonnage calculation procedures)
dwt	deadweight tons
EEC	European Economic Community
FOC	flag(s) of convenience
grt	gross registered tons
LPG	Liquefied petroleum gas
LNG	Liquefied natural gas
OBO	Oil/Bulk/Ore
OECD	Organisation for Economic Co-operation and Development
TEU	Twenty-foot equivalent unit
ULCC	Ultra large crude carrier
VLCC	Very large crude carrier

NOTE

The designations employed and the presentation of the material in this report do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

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INTRODUCTION

(i) At its thirteenth session the Committee on Shipping, in its resolution 62 (XIII) on the imbalance between supply and demand in world shipping, requested the UNCTAD secretariat to continue to monitor developments in world shipping and likewise those developments in world shipbuilding which have an impact on world shipping developments, with particular reference to the imbalance between supply and demand in world shipping, and to report thereon to the Committee at its fourteenth session.

(ii) The resolution specifically recognized that, as shipping is an international activity which affects groups of countries differently, it is necessary to hold global discussions and to find internationally acceptable policies taking into account the special interests of developing countries and the recognized need to assist them with the development of their merchant marines.

(iii) The present report has been prepared by the secretariat in response to the above mentioned request.

(iv) Chapter I provides a general overview of the situation in world shipping and highlights recent developments in particular as regards the imbalance between supply and demand, which has been a prominent feature of world shipping during a large part of the last decade. It updates certain relevant statistical data shown in document TD/B/C.4/312. It also reviews recent developments in relation to world shipbuilding capacity. Chapter II presents conclusions and recommendations.

(v) The secretariat wishes to thank all organizations as well as individuals for their assistance in the preparation of this report through the provision of statistical data and other information. Their kind co-operation is hereby gratefully acknowledged.

Chapter I

THE IMBALANCE BETWEEN SUPPLY AND DEMAND IN WORLD SHIPPING: RECENT DEVELOPMENTS

1. The changing pattern of international trade in recent years, combined with important technological developments, has led to important structural as well as technological changes in the world shipping industry, which is the main means of transport in international trade. The shipping industry has responded to these changes and continuously makes efforts to adapt to them, although this frequently involves severe upheavals in the traditional pattern and structures of available shipping services.

2. The world merchant fleet is generally unable to respond quickly to a rapid decline of seaborne trade because existing tonnage cannot easily be redeployed, while contractual obligations regarding ships under construction or ordered cannot be broken without substantial financial penalties. This characteristic of maritime transport, which may be combined with speculative ordering of new ships by shipowners even during a situation of oversupply (in the expectation that reductions in international trade would only be temporary), may lead to excess tonnage situations - as in the mid-1970s when, after years of steady substantial growth, seaborne trade started to diminish, especially in the petroleum trades. At the same time, the growth of the world merchant fleet continued, reflected largely in an increase of open-registry tonnage. The resulting imbalance between supply and demand in world shipping reached its peak in 1983, when the average annual figure of estimated surplus tonnage reached 28.5 per cent of the world fleet. At the same time the physicial volume of world international trade stood at 3.2 billion tons, i.e. the lowest level since 1975. The decrease in world merchant fleet tonnage started only in 1983, declining from the previous year's record figure of 693.5 million dwt to 686.0 million dwt or by about 1 per cent. This declining trend continued until 1988, when the world merchant fleet tonnage decreased to 627.9 million dwt. However, in 1989 the tonnage of the world merchant fleet showed an increase of about 1.6 per cent for the first time in the past six years and grew to 638 million dwt.

3. The main causes of the imbalance between supply and demand in world shipping during the 1980s were considered in detail in the UNCTAD secretariat reports TD/B/C.4/301 and TD/B/C.4/312, which pointed out, inter alia, that a major cause of the prolonged shipping crisis was the very high level and the scale of government financial subsidies in the developed market-economy countries as well as indirect support measures (e.g. through fiscal arrangements) for the acquisition, operation and, in particular, building of new ships during the past decade. This has been instrumental in deferring - if not precluding - the working of mechanisms of structural adjustment, and thus inhibiting a process of optimization of resource allocations within countries, as well as within the shipping industry at a global level.

4. More recently, however, there has been a certain improvement in the balance between supply and demand in world shipping. This may be attributed to a substantial decline in deliveries of newbuildings in 1987-1988 showing the lowest figures for the last decade (see table 1), intensive demolition of old and inefficient ships in 1982-1986 when the annual amount of tonnage sold for breaking fluctuated at the level of 28.3 million dwt to 41.7 million dwt (see table 2) and a remarkable increase in world trade during the last two years, when in 1988 total volume returned to approximately the 1980 level (3.7 billion tons) 1/ and even exceeded it in 1989 (3.9 billion tons). 2/

Table 1

World tonnage, oversupply, ships on order, deliveries, and average age of the merchant fleet by type of vessel, 1970-1989
(million dwt and percentages)

	1970	1975	1980	1982	1983	1984	1985	1986	1987	1988	1989 (est.)
1. World fleet as at 1 July	326.1	546.3	682.2	693.5	686.0	674.5	664.8	639.1	632.3	627.9	638.0
of which:											
Oil tankers	148.0	281.2	339.3	324.5	305.4	286.1	261.4	239.5	236.3	234.9	237.2
Dry bulk a/	72.1	142.4	185.6	206.0	215.3	222.3	232.1	230.5	227.4	225.8	227.3
General cargo	..	..	115.8	114.0	112.4	108.8	105.8	100.8	97.7	94.4	93.3
Unitized (fully cellular containerships and lighter carriers)	..	..	12.2	14.4	15.7	18.0	19.9	21.5	23.1	24.3	24.6
2. Surplus b/ total	0.6	48.7	97.1	184.1	195.8	171.2	161.5	108.1	101.1	83.4	62.6
dwt % of world fleet	0.2	8.9	14.2	26.5	28.5	25.4	24.3	16.9	16.0	13.3	9.8
of which:											
Tankers dwt	0.2	41.3	74.0	130.7	134.0	111.7	100.9	68.8	65.8	54.7	41.8
% of tanker fleet	0.1	14.7	21.8	40.3	43.9	39.0	38.6	28.7	27.8	23.2	17.6
Dry bulk carriers a/ dwt	0.4c/	7.4c/	19.7	46.4	52.0	50.3	50.1	30.8	28.0	23.4	17.2
% of dry bulk fleet	0.5	5.2	10.6	22.5	24.7	22.6	21.6	13.4	12.3	10.4	7.6
General cargo dwt	..	..	3.0	6.1	8.3	7.6	5.8	4.3	3.6	2.9	2.7
% of general cargo fleet	..	..	2.6	5.4	7.4	7.0	5.5	4.3	3.7	3.1	2.9
Unitized dwt	..	..	0.4	0.9	1.5	1.6	1.7	1.5	1.7	0.8	0.9
% of unitized fleet	..	..	3.3	6.3	9.6	8.9	8.5	7.0	7.3	3.3	3.6
3. Ships on order as at 30 September											
Total dwt	132.0	189.2	50.9	46.2	46.3	46.6	40.2	32.0	29.1	35.2	42.8
% of world fleet	40.5	34.6	7.5	6.7	6.7	6.9	6.0	5.0	4.6	5.6	6.7
of which:											
Tankers dwt	77.2	135.4	17.2	9.2	7.2	8.2	10.2	10.9	15.4	17.3	19.2
Dry bulk a/dwt	40.9	38.6	23.3	26.6	29.3	29.8	22.5	15.4	7.6	11.2	14.5
General cargo dwt	10.1	10.2	3.5	3.0	2.8	2.6	2.1	1.5	1.3	1.3	1.6
Unitized dwt	3.8	8.0	2.1	4.6	3.9	3.6	3.5	2.8	3.2	2.8	4.2
4. Deliveries											
Total dwt	35.8	59.8	16.0	24.4	21.4	24.4	23.8	22.9	15.5	14.0	18.8
% of world fleet	11.0	10.9	2.3	3.5	3.1	3.6	3.6	3.6	2.4	2.2	2.9
of which:											
Tankers (dwt)	20.1	45.1	6.4	5.8	5.1	3.5	4.3	6.5	5.2	7.1	8.8
Dry bulk a/(dwt)	9.6	10.7	4.8	15.1	11.7	15.7	14.9	12.6	7.5	3.9	6.5
General cargo (dwt)	..	3.7	3.5	2.7	3.1	3.3	2.8	1.9	1.6	1.5	..
Unitized (dwt)	..	0.2	1.3	0.8	1.5	1.9	1.7	1.9	1.2	1.5	..
5. Average age of the world merchant fleet (years) d/											
All ships	..	..	9.93	10.73	10.98	11.16	11.24	11.37	11.70	12.25	..
Tankers	..	..	8.89	9.82	9.98	10.40	10.96	11.62	12.05	12.55	..
Dry bulk carriers a/	..	..	9.07	10.25	10.61	10.63	10.37	10.43	10.66	11.31	..
General cargo	..	..	13.18	13.44	13.58	13.60	13.37	13.40	13.68	14.05	..

Source: Review of Maritime Transport, various issues; Lloyd's Register of Shipping - Merchant Shipbuilding Return, various issues; Fearnleys Review, various issues; Lloyd's Shipping Economist, various issues.

a/ Including combined carriers.

b/ Estimates of average figure for the year shown. Surplus tonnage is defined as tonnage which is not fully utilized due to slow steaming, lay-up status or lying idle for other reasons. For further details on estimates of tonnage oversupply see Review of Maritime Transport 1988. As of March 1989 Lloyd's Shipping Economist (London), (the main source for estimates of surplus tonnage in the world fleet shown in the present paper) changed the base for its calculation of slow steaming bulk carriers. (See Lloyd's Shipping Economist (London), March 1989, p.10). In the present table, as of 1986, figures shown are based on the revised method of calculation (except for the general cargo and unitized fleets for the years 1986 to 1988) which indicates considerably lower estimates of overcapacity.

c/ All dry cargo ships.

d/ Data as at 1 July of the respective year. Estimates for the period 1980-1985 were made in terms of grt, for the period 1986-1988 in terms of dwt.

Table 2

Tonnage reported sold for breaking by type of vessel, 1980-1989
(Thousand dwt and percentage shares)

Type of vessel	Thousands of dwt									Percentage shares								
	1980	1982	1983	1984	1985	1986	1987	1988	1989	1980	1982	1983	1984	1985	1986	1987	1988	1989
Tankers	7 951	23 253	24 348	19 822	26 794	12 306	6 549	2 570	1 567	79.6	82.2	74.5	67.9	64.3	39.4	40.1	44.6	48.1
Combined carriers	71	1 683	2 022	1 516	3 794	2 889	950	293	108	0.7	5.9	6.2	5.2	9.1	9.3	5.8	5.1	3.3
Dry bulk carriers	349	1 097	2 651	4 024	6 673	11 365	5 539	846	510	3.5	3.9	8.1	13.8	16.0	36.4	33.9	14.7	15.6
Other dry cargo ships	1 622	2 271	3 677	3 836	4 414	4 654	3 310	2 050	1 076	16.2	8.0	11.2	13.1	10.6	14.9	20.2	35.6	33.0
Total	9 993	28 304	32 698	29 198	41 675	31 214	16 348	5 759	3 261	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
a/	1.5	4.1	4.8	4.3	6.3	4.9	2.6	0.9	0.5									

Source: Fearnleys, Review, various issues.

a/ Broken-up tonnage as a percentage of the total world fleet.

5. As shown in table 1, the estimated surplus has been decreasing continuously since 1983 when it stood at 195.8 million dwt or 28.5 per cent of the world fleet. In 1989, it was estimated at 62.6 million dwt or 9.8 per cent of the world merchant fleet. However it should be noted that the figures of surplus fleet for 1989 as shown in table 1 are not fully comparable with those for the previous years due to the change of the base for calculation of slow steaming bulk carriers (for further information see foot-note b/ to table 1) taking into account generally lower average speeds.

6. Even after significant growth of the total seaborne trade in 1988 and 1989 (by 4.1 per cent and by 5.5 per cent over the previous year's figure respectively), 5.2 per cent growth of petroleum trade in 1988 and a further increase in 1989, the estimated average annual surplus fleet share for tankers as at mid-1989 stood at 41.8 million dwt or 17.6 per cent of the existing tanker fleet. The figure for the estimated average annual surplus of dry bulk fleet stood at 17.2 million dwt in 1989 or 7.6 per cent of the world dry bulk fleet and can be attributed mostly to the slow-steaming tonnage.

7. Tonnage laid-up for lack of employment and idle tonnage (included in the surplus figures) has decreased substantially during recent years. As at 1 February 1990 laid-up tonnage in particular amounted to 4.4 million dwt, of which 3.1 million dwt (57 vessels) were in tankers and 1.3 million dwt (226 vessels) were in the dry bulk category. 3/ These are practically the lowest figures for laid-up tonnage for the last 10 years.

8. A considerable decrease of tonnage engaged in oil storage during the last three years reflects the improvement of the situation in the world merchant shipping. Thus, in December 1989 it stood at about 10 million dwt as compared to 11.1 million dwt in December 1988, 15.2 million dwt in December 1987 and 19.6 million dwt in December 1986. 4/

9. The unitized tonnage sector showed an estimated 3.3 per cent and 3.6 per cent surplus in terms of deadweight tonnage in 1988 and 1989. However, in terms of TEU capacity, the surplus of the container fleet was much higher. According to the OECD, there still existed overcapacity in liner shipping, especially in the container sector, which was estimated, depending upon the trade route, at between 25 and 30 per cent during 1988. 5/ A considerable increase in the total capacity of the container fleet, which only for 1988 alone was estimated at 10.8 per cent and for the five-year period 1984-1988 at 48 per cent, 6/ and which resulted mainly from the introduction of large new-generation, high-capacity container vessels, has led to concern regarding a further increase in overcapacity in this sector in the future.

10. A more balanced situation was reached in the general cargo fleet sector, where the share of surplus in this type of ship amounted to 3.1 per cent in 1988 and 2.9 per cent in 1989.

11. A widely prevailing opinion at the moment appears to be that shipping has reached the beginning of an upward cycle which can be maintained provided that no excessive newbuilding programmes are started and that attractive freight and charter rates do not deter owners in the longer term from scrapping older and/or uneconomic tonnage.

12. As shown in table 1, ships on order showed a declining trend between 1980 and 1987 (from 50.9 to 29.1 million dwt) but new orders were increasing rapidly in 1988 and 1989 (35.2 and 42.8 million dwt, respectively). This has also led to some concern that a situation of considerable overtonnaging could develop again, particularly when taking into account the substantial decline during recent years in tonnage sold for demolition, as referred to hereafter.

13. The improvement in the balance in world shipping in 1988-1989, which has materialized through an increase in demand for various types of ships as well as a certain increase in freight rates and the general expectation that this recovery will continue, at least in the near future, were reflected in the substantial decline of tonnage sold for demolition and an increase in prices for new buildings and second-hand vessels. As shown in table 2, in 1988 and 1989 the volume of tonnage sold for demolition amounted to only 0.9 per cent and 0.5 per cent of the existing merchant fleet respectively, which may be compared to the preceding five years 1983-1987, when it amounted to 4.8 per cent, 4.3 per cent, 6.3 per cent, 4.9 per cent and 2.6 per cent respectively and thus acted as one of the main means for the restoration of a more balanced world shipping situation.

14. A considerable increase in the level of demolition prices was noted in 1988-1989. The prices in 1989 were 11.3 per cent and 81.8 per cent higher than in 1988 and 1987 respectively in the Pakistan/India region, 6.7 per cent and 55.3 per cent higher in the South Europe region and 2.8 per cent and 44.7 per cent higher in the Far East market. 7/ However, the major part of 5.7 million dwt sold for demolition in 1988 (as compared to 16.3 million dwt in 1987, 31.2 million dwt in 1986 and 41.7 million dwt in 1985) was constituted of vessels more than 20 years old or damaged which under other circumstances might not have been sold for demolition. In 1989 the tonnage sold for demolition (3.3 million dwt) comprised basically damaged ships as well as naval and fishing vessels. In view of the current high freight rates and increased prices for second-hand ships (the average prices per dwt in January-June 1989 were 63 per cent higher than for the corresponding period of the previous year), 8/ high prices offered by the scrap industry were not sufficiently attractive to induce shipowners to take their vessels out of trading and send them to the scrapyards.

15. As a result, as shown in table 3, the average age of tankers and combined carriers sold for scrapping in 1988 was the highest since 1981 (11.1 per cent above the previous year's figure) and that of dry bulk carriers was 18.1 per cent above the previous year's figure; this means that it was practically at the level of 1981, which was the highest in the period in question. There is no evidence that this tendency changed in 1989.

Table 3

Average age of bulk carriers sold for demolition in 1981-1988
(Years)

Year	Tankers and combined carriers	Dry bulk carriers
1981	14.03	23.51
1982	13.53	21.35
1983	14.08	18.95
1984	15.14	21.34
1985	13.86	19.87
1986	15.71	18.66
1987	17.50	19.33
1988	19.46	22.83

Source: Howard Houlder Chartering (London); see Fairplay International, (London), 4 December 1986, p. 43, and Lloyd's List, 6 January 1987 and 5 January 1989.

16. The sharp decline in the demolition of old and obsolete tonnage resulted in a further increase in the average age of the world merchant fleet, which stood in 1988 at 12.25 years (in terms of dwt) as compared to 11.37 years and 11.70 years in 1986 and 1987 respectively. The relative share in the total fleet of vessels of 15 years old and over increased during the period from 1986 to 1988 from 22.8 per cent to 28.2 per cent. In the tanker sector, the share of vessels which were 15 years old and over increased from 15.7 per cent in 1986 to 22.8 per cent in 1988. During the same period in the dry bulk carrier sector (including combined carriers) the share of the above-mentioned category increased from 22.2 per cent to 27.4 per cent. In the general cargo vessel sector 42.2 per cent of existing tonnage is 15 years old and over.

17. The ageing of the existing tonnage is accompanied by an increase in new orders. The total deadweight of the world fleet on order amounted to 42.8 million dwt as at 30 September 1989 which was 21.6 per cent and 47.1 per cent higher than that for the corresponding period of the previous year and 1987 respectively. The order intake of the world's shipyards for merchant fleet tonnage (including passenger ships and ferries) stood for 11 months of 1989 at 33.0 million dwt as compared to 19.9 million dwt for the 12 months of 1988 and 20.0 million dwt for 1987. The monthly average of the order intake amounted to 3 million dwt (92 ships) in 1989, 1.7 million dwt (64 ships) in 1988 and 1.7 million dwt (60 ships) in 1987. 9/ Ships of a total deadweight capacity amounting to 22.4 million tons are scheduled for delivery by the end of 1990. Oil tankers, bulk carriers and combined carriers represent 78.1 per cent of this figure. 10/

18. Developments with respect to world shipbuilding output and capacities directly effect the situation of imbalance between supply and demand in world shipping. It has thus become increasingly recognized that policies with respect to shipping and shipbuilding should be taken in a co-ordinated fashion. 11/ During recent years, large reductions in capacity and restructuring have taken place in many countries with shipbuilding capacity. According to AWES the available capacities of the shipbuilding industries in European countries were reduced from an aggregated 8.5 million cgt in 1975 to around 3.3 million in 1989, i.e. a total reduction of around 60 per cent while in Japan, capacities of shipyards for building larger ships were reduced from 9.8 million cgt in 1975 to 4.6 million cgt in 1988 (-53 per cent). According to the same report, the Republic of Korea, one of the main producers, opposes any reduction of capacities and points to a reduction of manpower only. 12/

19. Decisions were also taken to reduce subsidies to shipbuilding. In particular, the maximum authorized subsidy per ship (for large ships) within EEC member countries would be reduced from 26 to 20 per cent while, within the OECD (Working Party No. 6 on Shipbuilding) it was proposed to eliminate all shipbuilding subsidies by 1991. 13/

20. There remains some concern, however, that excessive and speculative ordering could again rapidly increase world shipbuilding capacity by bringing dormant shipyards back into production (although lack of skilled labour may present problems) and thus lead again to a situation of substantial overcapacity. There is therefore a need for continued consultations and co-ordinated actions by all parties and organizations concerned.

Chapter II

CONCLUSIONS AND RECOMMENDATIONS

21. The large imbalance between supply and demand in world shipping which largely characterized the last decade has considerably diminished during recent years as compared with the peak year of 1983. However, the average figure for the year of the surplus tonnage was still estimated in 1988 at over 83 million dwt or about 13.3 per cent of the world merchant fleet and at over 62 million dwt or 9.8 per cent in 1989 (as compared to 101.1 million dwt or 16 per cent in 1987 and 108 million dwt or 16.9 per cent in 1986); preliminary indications show that, although there is a declining trend, overcapacity will continue for some time and may even be accentuated in certain specific sectors.

22. In 1989 the tanker sector remained the most affected with 41.8 million dwt of surplus tonnage (17.6 per cent of the world tanker fleet) and the dry bulk sector with 17.2 million dwt (7.6 per cent of the world dry bulk fleet) of surplus tonnage (including combined carriers).

23. Imbalances between supply and demand continued to be a prominent feature in liner shipping, especially in the containerized sector where the overcapacity was estimated, depending upon the trade route, at between 25 and 30 per cent during 1988. Thus, in the Europe-North America trade overcapacity was estimated in excess of 20 per cent and in the Far East-North America (West Coast) trade at between 25 and 30 per cent at the beginning of 1989. 14/

24. A certain improvement in world trade in 1988-1989 and an increase of demand for tonnage led to a significant reduction in scrappings and broken up tonnage. Thus the amount of tonnage sold for breaking during 1989 stood at 3.3 million dwt (which may be compared to the recent peak figure of 41.7 million dwt in 1985). The decrease of demolition occurred particularly in the tanker and dry bulk carrier sector (including combined ships). The major part of the tonnage sold for demolition in 1988-1989 was constituted of vessels more than 20 years old or damaged.

25. At the same time the amount of contracts for newbuildings (in terms of deadweight) placed during 1989 has increased significantly (by the end of November 1989 it stood at 33.0 million dwt or 65.2 per cent higher than for the whole of 1988). This increase should be attributed mostly to tankers with newbuilding orders of 15.9 million dwt (88.7 per cent increase as compared with 1988) and dry bulk carriers including combined carriers with newbuilding orders of 11.9 million dwt (48.2 per cent increase). Thus, bulk carriers, taken as a group, accounted for 82.2 per cent of all new orders placed during 11 months of 1989.

26. A considerable amount of newbuildings will of course be required as replacement tonnage as the average age of the world fleet has been increasing during recent years. Thus 28.2 per cent of tonnage was 15 years old and over in 1988 (for socialist countries of Eastern Europe and Asia this figure stands at 41.4 per cent). 15/ The situation in the tanker sector is even more complicated as at the beginning of 1990 about 47.5 per cent of the existing world tanker fleet was 15 years old and over, i.e. built in 1975 or earlier. 16/ But there appeared to be some elements of speculative ordering of new ships in expectation of further growth of demand for tonnage, as for

instance in the case of container ships and tankers. Overall capacity of the world's full containership fleet, for instance, increased by 48 per cent during the five-year period 1984-1988. Concern has also been expressed about the fact that some major oil companies have decided to extend the life of their VL/ULCCs to 25-30 years, while large orders are placed for new VLCCs. 17/ This situation might lead to an increase of surplus tonnage in world shipping in the near future, a situation which might be worsened by a possible decrease of world trade in certain commodities.

27. During recent years, large reductions in capacity and restructuring have taken place in many countries with shipbuilding capacity. Thus, on a worldwide basis shipbuilding industry and global shipbuilding capacity has been reduced by approximately 25 per cent since the middle of the 1970s. This occured mostly due to considerable reduction of the shipbuilding capacities in West European countries and Japan.

28. There is some concern, however, that in order to accommodate a rise in orders for new building some shipyards are considering the reactivation of certain idle facilities to find the right berths to build certain types of ships which might again lead to excess capacity situations (although a lack of skilled manpower may make reactivation difficult). Thus, on the whole, there is considerable resilience in the shipping and shipbuilding industries. In particular, spare capacity which can be released rapidly exists in shipping as a result of slow steaming and in shipbuilding through inactive (mothballed) yards.

29. In a more long-term perspective, there is also concern that a significant concentration of demolition of over-aged tonnage, especially tankers may be expected by the mid-1990s, as tankers built in 1978 now constitute more than half the existing tanker fleet while for VL/ULCCs, this would be 72 per cent. In this situation the present low level of demolition may be insufficient to ensure the timely renewal of the tanker fleet.

30. Taking these developments into consideration the present improvement in the balance between supply and demand in world shipping could again rapidly worsen at some future point. Governments, international organizations and shipowners as well as banking and financial institutions have a role to play in avoiding future large and prolonged overcapacity situations. Governments and international organizations should refrain from artificially and excessively stimulating demand for new ships through subsidies, easy financing and other support measures. Shipowners as well as banking and financing institutions will need to consider long-term prospects in the ordering of newbuildings. It would appear that, on the whole, events of the late 1980s have brought about a more cautious approach to the ordering and financing of new ships, requiring in particular more owners' equity. On the whole, shippers are the major beneficiaries of situations of overcapacity, although some concern may be expressed as regards disruptions and instability in certain trades resulting from cut-throat competition.

31. In the light of the above considerations, the Committee on Shipping may wish to request the UNCTAD secretariat to continue to monitor developments in world shipping, giving special attention to particular sectors and to report to it on the situation in particular in the annual Review of Maritime Transport.

Notes

1/ For more detailed information, see Review of Maritime Transport, 1988 (TD/B/C.4/320).

2/ Fearnleys Review 1989 (Oslo), p. 34.

3/ Lloyd's List (London), 15 February 1990.

4/ John I. Jacobs PLC, World Tanker Fleet Review (London), July-December 1989, p. 22.

5/ Maritime Transport 1988, OECD, Paris, 1989, p. 51.

6/ See, International Transport Journal (Basel), 1989, No. 34, p. 3099, and Lloyd's List, 9 February 1990.

7/ For further details see Review of Maritime Transport, 1988 (TD/B/C.4/320).

8/ Wescol International Marine Services (London), World Trade Review and Outlook. Developments in the trade and the shipping market, September 1989, p. 36.

9/ Institute of Shipping Economics and Logistics (Bremen), Shipping Statistics, 1989, No. 1, p.4.

10/ Fearnleys, Review 1989 (Oslo), p.39.

11/ Thus, in a document on EEC maritime transport policy, it was strongly urged "that the Community take shipbuilding policy into account; it too has an impact on shipping policy, since the persistent problem of overcapacity is one that handicaps any recovery in shipping. See, EEC Transport Policy, Communication and Proposals by the Commission to the Council (Brussels, June 1986, Catalogue Number ESC-86-008-EN).

12/ AWES, Annual Report, 1988-1989.

13/ The Republic of Korea now participates as a full member in the work of the OECD Working Party No. 6 on Shipbuilding.

14/ Maritime Transport 1988, OECD, Paris, 1989, pp. 51-52.

15/ For further details see Review of Maritime Transport, 1988 (TD/B/C.4/320).

16/ John I. Jacobs PLC, World Tanker Fleet Review (London), July-December 1989, p. 37.

17/ Lloyd's List (London), 7 October 1989.